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PERMITS IMPROVEMENT TEAM

FINAL DRAFT OF

CONCEPT PAPER ON ENVIRONMENTAL PERMITTING

AND

TASK FORCE RECOMMENDATIONS

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CONCEPT PAPER ON ENVIRONMENTAL PERMITTING

I. Introduction

A. Purpose of the Concept Paper

Over the past 25 years, EPA has continually searched to find the best ways to protect the environment. Among the most successful methods have been EPA's programs requiring industrial and municipal facilities to obtain permits to control their pollutant emissions[1] to the air, land and water. Programs such as New Source Review for air emissions, National Pollutant Discharge Elimination System (NPDES) for water discharges and the Resource Conservation and Recovery Act (RCRA) for hazardous waste management have in many ways reduced the negative impacts of industrial and municipal facilities on human health and the environment.

But numerous environmental challenges remain. Perhaps the greatest challenge for EPA today is to answer the public demand for more environmental protection at less cost. This demand of "more for less" requires EPA to examine both the philosophy and practice of its permitting systems, to determine how they can be made to function more effectively while at the same time decreasing costs for environmental agencies and the regulated community.

This concept paper seeks to resolve these concerns by establishing a revised approach to environmental permitting: **public performance-based permitting**. This approach incorporates two concepts; one, the establishment of a defined level of performance to be achieved by the permittee and two, providing the public with the necessary information so they can monitor the permitting process and compliance of permitted facilities. Once the final draft of this concept paper has been completed and approved (following the incorporation of additional comments), it will serve as a statement of official EPA policy on environmental permitting. As such, it will be used by EPA permit programs as guidance. EPA Program offices affected by these changes will need to develop plans that outline what they must do to implement these principles (e.g., policy, regulatory or process changes) consistent with statutory requirements. Theses plans could take the form of program specific strategic plans that would include short and long-term goals for moving the public performance-based permitting concepts forward. It is important to note that some EPA programs, such as NPDES

[1] The terms "emission", "release" and "discharge" are used interchangeably in this paper.

permitting, are already applying many of these principles, and therefore may have fewer changes to make.

Other environmental permitting programs, such as those of state, tribal or local governments, are strongly encouraged to adopt these principles where appropriate.

B. EPA's Relationship with State, Tribal and Local Environmental Agencies

Before discussing the principles of a modified permitting system, it is important to understand the context in which these principles would be carried out. Rather than issuing most permits itself, EPA generally has established programs to authorize state, tribal and local permitting authorities, to perform most of the permitting. Recently, EPA and the states signed an agreement, the National Environmental Performance Partnership System, aimed at making EPA oversight of states less uniform and prescriptive and more based on performance, so that states with more effective programs and proven environmental results may receive less oversight. A similar approach is being developed for tribes. This concept paper follows the principles of the new EPA/state relationship, with the goals of making EPA permitting systems more performance-based and providing authorized permitting authorities more flexibility to find the best approaches to permitting and data management. The principles in this paper, therefore, should be understood as approaches that EPA would like to encourage through flexibility and assistance to state, tribal and local governments, and not as any kind of new mandates. A key aspect of that assistance is the provision of information from EPA databases. A comprehensive effort to upgrade the quality and breath of these databases is needed. Some of the individual Task Force recommendations that follow this paper identify specific projects to improve the Agency's delivery of information. In addition, specific changes to the permitting system need to be developed through continued dialogue with state, tribal and local environmental agencies and other stakeholders[2].

C. Permits Improvement Initiatives

[2] The term stakeholder(s) is used in this paper to refer to all groups interested in environmental permitting, including environmental, community and environmental justice groups, regulated entities, and state, tribal and local permitting agencies.

While EPA and many other environmental agencies have taken, and are taking, specific actions to improve their permitting systems, there is also a need to re-examine EPA's overall approach to permitting. Toward this end, the Permits Improvement Team (PIT) was founded by EPA's Administrator in July 1994 to comprehensively examine the permit reform efforts going on around the country and determine how, taking the best of these efforts, EPA's overall approach to permitting could be improved. (A compilation of over 100 environmental agency permitting reform projects, entitled "The Inventory of USEPA/State Permit Improvement Initiatives" can be accessed via the internet at 'gopher://gopher.epa.gov' or at 'http://www.epa.gov'. After reaching either of these internet sites, locate the search function and type 'Permit Improvement Team' to locate the inventory. A hard copy of the inventory can be obtained by calling 908-321-6782.)

D. Public Performance-Based Permitting

The purpose of permitting is to establish the level of performance needed by facilities or individuals to protect human health and the environment. To do so, EPA has in some cases set performance standards, determined the technical means by which facilities must comply with these standards, and then required monitoring and inspection to assure their compliance. In some instances, standards were highly prescriptive (including detailed technology or management requirements) that eliminate or severely restrict alternative approaches to achieving compliance. In other cases EPA bases a standard on a technology, which can be viewed by the regulated community as the technology of choice.

It is the contention of this paper that too much time and resources are spent reviewing the technical means by which a permittee will comply with permit conditions. While detailed technical reviews were warranted 25 years ago, sufficient progress has been made in verifying technology and increasing corporate environmental responsibility that it is now appropriate to re-evaluate this approach. In instances where technologies are new or unique, detailed technical review may still be warranted; in circumstances where proven or verified technology is being permitted, however, such level of review may be inappropriate. Conducting detailed technical reviews for off-the-shelf technologies has resulted in several negative consequences:

- Permitting agencies are overloaded with routine detailed paperwork to review. This takes time away from other activities, as verifying the equivalency of performance for

innovative technologies, causes permit actions to take an unacceptable amount of time, and prevents a more logical and beneficial ordering of priorities. In addition, the excessive focus on the means of compliance distracts attention from evaluation of progress on the end of improving environmental conditions.

- The regulated community, in addition to sometimes being burdened by unwarranted paperwork, a slow permitting process and unnecessary economic hardships, is in some cases not provided the flexibility -- or any incentives -- to seek the kind of technological innovations which could prevent pollution at its source, and/or provide better environmental results at lower cost.

- The permitting process is largely focused on technical issues, sometimes, beyond the grasp and interest of the general public. The permitting agency and permittee can spend much time grappling with these issues, while the public is usually excluded until such a time when these issues have been resolved through the writing of a draft permit. The public's ability and opportunity to judge the permit process and results can thus be unduly limited.

In order to remedy this situation, this paper proposes a permitting approach called **public performance-based permitting, or P3**. The essence of this approach is to shift the focus of environmental permitting towards the measurement and assurance of performance, while providing flexibility as to how a permittee will meet performance standards. The focus of this system will not simply be performance, but performance within a public arena: to the extent possible and appropriate, the public should be involved in the setting of performance standards and the measurement and judgement of performance. It is recognized that the existing environmental statutes may limit EPA's latitude in fully implementing this approach. As EPA seeks changes to its various permitting programs in accordance with this approach, specific legislative barriers will be identified. As opportunities develop to address these barriers, specific legislative changes will be proposed.

The P3 principle includes three different types of performance. The existing permitting programs each contain elements of this principle. The objective of the permitting programs will be to more fully implement each type of performance.

1. **Environmental results**: How are permitted activities

actually affecting the environment? To improve knowledge and understanding of this performance factor, this paper proposes that permitting agencies increase ambient (environmental) monitoring as a permit condition in selected permits, while comparatively reducing other emissions monitoring and reporting requirements. Ambient monitoring results shall be reported to the public in understandable terms. Ambient monitoring would not eliminate individual facility monitoring requirements.

2. **Facility compliance**: How well are permitted facilities complying with their permits over time? To increase the rates at which facilities comply with their permit conditions, permitting agencies should (1) establish reporting requirements based on a facility's level of compliance (e.g., reduce reporting for facilities with good compliance records) and potential impact of an activity, (2) create incentives for pollution prevention and technological innovation, and (3) provide compliance assistance to facilities that are making good-faith efforts but finding it difficult to comply (e.g., small businesses and local governments). Furthermore, compliance data will be put in understandable terms and made available to the public.

3. **Agency performance**: How good a job are EPA and other environmental permitting agencies doing? To ensure that they continue to protect the environment in the most effective and efficient ways possible, this paper recommends that EPA devise methods to measure the performance of permitting systems and to continually improve these systems based on performance data received. These methods shall be provided for the use of state, tribal and local environmental agencies as well. Information on the performance of all permitting agencies should be publicly reported in understandable terms.

The proposals for these three types of performance are detailed in the following sections. But first, it is necessary to discuss in more detail the importance of public participation in the approach to permitting specified in this concept paper.

Traditionally, permitting agencies have limited public participation to public comment periods and hearings at the latter stages of the permit process. This concept paper sets forth a more open process that provides the public opportunities for earlier and

more meaningful participation, within the context of the requirements specified in federal and state laws. This model is inspired by some recent initiatives in public participation, including EPA's RCRA Expanded Public Participation rule and the Chemical Manufacturing Association's (CMA) Responsible Care Program.

These initiatives are based on the concept of direct reporting of information to the public early in the permitting process and in understandable terms. In addition to increasing public awareness regarding facility operations, these programs can serve as a powerful incentive for facilities to reduce their toxic emissions, so as to avoid arousing public concern. P3 would extend these concepts to the public reporting of ambient monitoring results, facility compliance data and information on how well EPA and permitting agencies are performing.

Furthermore, an effective permitting process (for individual permits) requires that the public be involved early and intimately enough that their needs and concerns may be incorporated into permits and other aspects of facility and/or agency policy. Such opportunities can defuse the kinds of adversarial relationships which otherwise may slow and obstruct the permitting system with, for example, lawsuits or permit appeals.

To address these types of concerns, the CMA established its Responsible Care program. Under this program, chemical plants are encouraged to establish community advisory panels, through which the facility and members of its surrounding community can establish a continuing dialogue. The Departments of Defense and Energy have developed similar programs to encourage community participation in their environmental projects. Such forums allow the public and the facility new opportunities to educate each other on their respective needs and concerns, and to jointly resolve differences on environmental issues. EPA will encourage the development of community advisory panels at more facilities, by facilitating the establishment of similar committees in situations where the public and regulated community determine it would be beneficial.

Public performance-based permitting is designed to change the relationships among permitting agencies, permittees and the general public. The permitting process is currently often burdened with mistrust and adversarial relationships among all three of these parties. If these relationships can be rebuilt on a basis of trust, partnering, accountability and cooperation, the most serious obstacles to an effective and efficient permitting system will have been removed. (See Figure I)

The PIT specifically notes that there are regulatory or statutory barriers to some of the approaches listed below. The Agency's ability to implement each of these options under current law would need to be investigated further as these options are developed in more detail.

II. Environmental Results

The ultimate measure of the performance of EPA's environmental permitting systems is the condition of the air, land and water. Current permitting systems focus primarily on gathering information about permittees' compliance, but comparatively little information is gathered on the actual effects of permitted activities on human health and the environment. To a large extent, environmental permitting systems also lack the flexibility to restructure and rearrange their priorities in response to such environmental performance data, since they are often set up to issue individual permits based solely on the potential impacts of each facility. However, changes are being proposed in this area as permitting authorities consider ecosystem and community based approaches to permit issuance.

FIGURE I

Yet in order to answer public demands for more environmental protection at less cost, there is a need to determine how to focus more resources on the activities producing the greatest environmental impact, while divesting from activities of lesser significance. To do so effectively, better information is needed on the effects industrial and municipal activities are actually having on the air, land and water.

This should be accomplished through, for example, an increase in the use of ambient monitoring as a permit condition. Practically speaking, this cannot be done overnight. EPA needs to research how to perform ambient monitoring in a cost-effective manner, how to collect useful data and how to trace pollution found through such monitoring back to the source(s). Different media present varying challenges: air monitoring, for example, is particularly complex. It might be beneficial to work on these issues in a multi-program team with Office of Research and Development (ORD) support.

Despite these challenges, some programs are already beginning to achieve these objectives. The Greater Houston Partnership, for example, is a voluntary program under which Houston-area refineries have set up an air monitoring network. In the short term, EPA will encourage and set up more such pilots and feed all results into a study of how to run effective ambient monitoring programs. These pilots should cover each media (air, surface water and ground water) jointly or separately, and some of the pilots should incorporate the concept of involving the community in monitoring, facilitated by experts from government or the private sector.

At the same time, it is important not to increase the information-gathering and reporting burden on permitted facilities. On many occasions, the regulated community has raised concerns about having to meet duplicative or counter-productive compliance monitoring, reporting or record-keeping requirements. In exchange for increasing ambient monitoring requirements, therefore, EPA shall concurrently identify and eliminate other compliance information requirements. The Office of Enforcement and Compliance Assurance and the Program offices, in consultation with stakeholders, will conduct thorough program reviews that rank compliance monitoring, reporting and record-keeping requirements according to the best estimate of their actual value to the environment and to determine where different media requirements for compliance information duplicate and/or conflict with one another. The reviews should be followed by proposals and schedules for permit programs to streamline reporting requirements.

This approach is an element in several other EPA initiatives. In

response to a Presidential initiative, EPA is examining how it can reduce paperwork requirements by 25%. This effort should be a major portion of the reviews discussed in the preceding paragraph. In addition, EPA's "one-stop reporting initiative" aims to streamline reporting requirements, for example by replacing separate facility identification codes used by different EPA programs with a single facility identifier.

Increasing ambient monitoring while decreasing other compliance information requirements at the source would allow permitting agencies to prioritize permitting information requirements based on real environmental impacts. But permitting agencies should be encouraged and allowed to take this idea one step further, and prioritize which facilities will receive full-fledged individual permits and which facilities can receive general (non-individual) permits or no permit at all, based on certain conditions or levels of emissions (this would require statutory amendments for some programs). The better ambient information becomes, the more precisely permitting agencies can and should gear environmental permitting systems to the most significant risks to the environment. This could entail protection of high quality areas as well as focusing on areas where environmental standards are not being achieved.

One major reform being developed by the PIT is to establish criteria to determine when individual permits are needed and when they could be replaced with types of permits requiring less administrative oversight and cost, without any impact to the environment. Such alternatives to individual permits include general permits, permits-by-rule, hybrid permits, and conditional and de minimis exemptions from permitting. Criteria developed by the PIT's Alternatives to Individual Permits Task Force include:

- Issue permits only where there is a real or potential adverse environmental impact and the regulatory agency needs to be involved (add value) in developing proper controls. This would require revision to certain environmental statutes.

- Issue <u>individual</u> permits only where there is a potential for significant environmental impact or high degree of variability in regulatory requirements at individual facilities.

It is important that the public be involved in the development and implementation of any alternatives to individual permits, and that adequate compliance and enforcement programs be put in place where

alternatives to individual permits are developed.

In the long term, and in conjunction with the pilots and research discussed above, --and recognizing the legal constraints that may exist-- EPA Program offices will revise policies and regulations to provide state, tribal and local permitting agencies more flexibility and guidance to: increase ambient monitoring, reduce end-of-pipe/stack monitoring and reporting requirements, adjust databases to focus on ambient data, and tier permitting systems based on the actual environmental impacts of different types of facilities and activities. Some programs (e.g. OW) are already developing guidance for reducing reporting and monitoring requirements.

III. Permittee Compliance

A. Hierarchy of Permitting Standards

While permitting systems need to be better geared towards actual environmental impacts, as discussed above, they still must include sufficient monitoring to determine permittee compliance. The key is to make permitting systems <u>less prescriptive</u> and <u>more performance-based</u>, or in other words, to continue to tell a permittee <u>what</u> standards to achieve, but to no longer mandate, in most cases, <u>how</u> they are to achieve them.

This more flexible approach is designed to:

- help the environment by encouraging pollution prevention;
- help permittees by giving them the opportunity to develop more cost-effective (and equally or more environmentally effective) approaches to pollution control and prevention; and
- help permitting agencies by allowing them to shift resources from extensive engineering and paperwork reviews to a focus on ambient monitoring, standard setting, compliance assistance and enforcement.

Permitting based on performance standards rather than on technology or management requirements is not a completely new idea. EPA's NPDES program, for example, currently uses such an approach to a large extent. Performance-based permitting will now be the preferred approach, wherever feasible and appropriate, for all of EPA's permitting programs, and state, tribal and local governments

will be provided the flexibility and guidance to implement similar approaches. Programs not using performance-based permitting will need to justify why that approach is not appropriate (e.g., see Underground Injection Control (UIC) example below).

Thus, EPA programs will follow the hierarchy of preferred approaches shown below in setting permitting standards:

i. Set performance standards based on ambient environmental goals.

ii. Set performance standards based on technological achievability.

iii. Set technology- or management-specific standards.

The ideal approach is where EPA sets performance standards based on actual environmental needs and projected impacts. EPA and other environmental agencies should follow this approach wherever possible and appropriate. It may be appropriate to combine the above approaches in an overall permitting system (e.g. establish a base level of performance and only require higher levels of performance where environmental conditions are not being achieved). This later approach is currently prescribed by statute in many of the Agency's permitting programs.

In cases where EPA is not able to establish permit conditions based on environmental needs, e.g., due to costs and complexities involved with obtaining useful ambient data, or due to methodological difficulties (there are significant difficulties with implementing ambient standard schemes, including contentious scientific issues), the second-best approach is for performance standards to be based on what is technologically achievable. For example, based on EPA's knowledge of the removal efficiency of a particular water pollution control device, the Water program may set a numerical standard that facilities will have to meet in order to be in compliance with statutorily established control standards. While the permitting program will make information available about what technologies are capable of achieving that standard, it will allow the facilities to make their own determination of what technologies to use to meet the numerical standard. In some cases, facilities may substitute a technology or procedure at earlier stages of its process, rather than at the end of the pipe or smokestack, so as to more efficiently prevent pollution and save having to deal with its consequences.

There will be instances in which technology- or management-specific

standards are warranted. For example, the underground injection control (UIC) program has a non-degradation policy backed up by engineering requirements that are supported by industry as well as by the permitting agency. In this program, the cost of ambient monitoring to ensure compliance would be excessive compared to establishing technical requirements.

B. Increasing facilities' operational flexibility

In addition to allowing permittees the flexibility to determine the technical means by which they meet EPA standards, there are several other ways to increase permittees' operating flexibility. Permitting agencies should consider these alternatives and incorporate them into their permitting processes as appropriate. Any alternatives that provide increased flexibility to the regulated community need to ensure that the requirements are enforceable.

First, permitting agencies' review of permits should be more performance-based. This would involve reducing review steps to those needed to reasonably demonstrate that the permittee will meet performance standards. Upfront technical (engineering) reviews, therefore, would be reduced or even eliminated where possible and appropriate. In general, where technologies are already proven or verified, there would be less need to perform technical review as part of the permitting process. EPA will give state, tribal and local governments the flexibility to reduce such reviews. EPA Program offices will evaluate existing regulations, policies and priorities that limit this flexibility and make appropriate revisions where authorized by statute. In addition, EPA will evaluate whether to shift grants funding from this stage of the permitting process to other more productive stages (such as compliance assistance and enforcement). This flexibility in use of grants is consistent with the Performance Partnership Grant program proposed in the FY96 EPA budget.

As an example, the lengthy and detailed technical reviews often conducted under the RCRA program may be less necessary for many standard container and tank storage operations. The PIT is working on a project with California and Texas to develop a general (non-individual) permit for this class of facilities, thus substantially streamlining the RCRA permitting program.

As noted in Section II, permitting agencies should also be given the leeway to reduce reporting and compliance monitoring requirements which are deemed to be unnecessary or duplicative.

Second, permitting agencies will be allowed to reduce the number of times permits need to be formally modified. Currently, lengthy permit modification processes discourage facilities from making needed process changes -- including changes which could reduce emissions. Generally, permit modifications should be required only where process changes will increase pollution, or are needed to ensure proper operation or monitoring of a facility (this is likely to require regulatory revisions in some permit programs). Permitting agencies should be able to tailor their permit modification requirements by facility; facilities with good compliance records may be made subject to less prescriptive requirements. Each EPA permitting program shall review their modification requirements and make appropriate revisions to only require permit modifications where needed to protect human health and the environment.

As discussed in Section I-D above, permitted facilities should be encouraged to establish mechanisms for conducting regular dialogue with the public, such as community advisory committees. Major changes in plant operations may well be appropriate topics for dialogue regardless of whether a permit modification is required.

Third, permitting agencies should use the permitting process to encourage municipal and industrial facilities to practice pollution prevention. One of the primary purposes of making permitting performance-based rather than technology-based is to encourage and allow facilities to pursue innovative technological approaches to preventing pollution at the source. However, additional incentives and technical assistance are needed. In addition to pollution prevention technologies, the permitting system should encourage the use of more cost effective innovative technologies of any type, where practicable and consistent with legal requirements.

In many cases, encouraging pollution prevention and innovative technologies will require facility-specific actions, e.g., drafting a flexible permit that allows the permittee discretion to do what is needed to prevent pollution. This is the approach of a major EPA initiative, Project XL, under which facilities are exempted from certain regulatory requirements if they can demonstrate that they will achieve better environmental results through other means. In addition, the PIT is working on a project with the state of New Jersey, under EPA's Environmental Technology Initiative (ETI), to develop and implement a protocol to encourage the utilization of innovative technologies and pollution prevention.

ETI is also sponsoring more than two dozen other projects, programs and demonstrations in order to remove barriers to technology

innovation in the permitting process, through facility-specific actions as well as more general regulatory, administrative and procedural changes. The Office of Policy, Planning and Evaluation has established a program to coordinate these ETI permitting projects and to provide information and assistance to other EPA offices, state, tribal, and local permitting agencies, and outside groups.

Turning to the additional incentives needed for encouraging pollution prevention the Pollution Prevention Incentives Task Force recommends, among other things: (1)increasing the use of facility-wide permitting, and (2) inserting language in general permits stating that pollution prevention is the preferred means of reaching compliance. Permitting agencies, at their discretion, may decide to use similar incentives to encourage recycling or other beneficial management methods as well as pollution prevention.

EPA's Multi-Media Pollution Prevention (M2P2) Permit Project is currently working with several states on multimedia permitting. This should become the long-term direction of EPA's permitting programs; however, the transition from single-medium to multi-media permitting will take time and careful planning. EPA's evaluation under the M2P2 Project will be used to plan that transition.

C. Public performance-based compliance assurance and enforcement

Regardless of the level of flexibility provided to permittees, there will always be a need for environmental agencies to monitor, assure and enforce compliance with permits. In fact, where upfront technical reviews are reduced or eliminated, these functions become even more important. Whereas the existing permitting system is in some ways geared to hold all permittees to requirements based on the worst-case scenario, the proposed system would gear requirements to actual environmental performance. A tiered approach to compliance assurance, is one possible approach, under which less significant violators are provided technical assistance, while more significant violators become subject to penalties that should be harsh enough to deter activities that may threaten human health or the environment.

In addition, information about permittee compliance performance should become available to the public in clear, user-friendly databases and publications. It is not enough for an industrial or municipal facility to perform to the satisfaction of the permitting agency; the surrounding community has the right to know how well a

facility is complying with its permits and use this information for itself. The concept behind this approach is to employ the power of public disclosure, so that a permittee would be deterred from violating permits by the public relations implications of poor compliance, or conversely be encouraged to maintain a high level of compliance by the public relations benefit of being in compliance.

The Office of Enforcement and Compliance Assurance (OECA), in consultation with appropriate stakeholder, will investigate and recommend ways to publicize, in an easy to understand format, facilities' compliance records. Some possibilities are an annual report (developed by the permitting authority) or requiring compliance reporting as part of a facility's permit. This compliance reporting could be based on a third-party audit, conducted by an impartial auditor, or a self-audit, possibly used at facilities with excellent compliance histories. The developed approach would probably have to be piloted in particular media programs, Regions or states before it is ready to be applied to all permitting programs individually and on a multimedia basis. It will also require study by OECA to ensure that this system is successfully designed to be legally defensible, fair, efficient and enforceable.

The criteria behind the compliance reporting should take several factors into account. First, there should be a clear distinction between paperwork violations of little or no direct consequence to the environment and permit violations with the actual potential to damage the environment or human health. It is recognized that certain paperwork requirements are critical to determining permit compliance. Furthermore, continued violation of paperwork requirements should result in enforcement action. Second, there could be separate ranking systems for small and large facilities, since they face different challenges when it comes to permit compliance. (With small facilities, the greatest challenge can be having the time and resources to understand and afford to comply with permit requirements. With larger facilities, the top challenge may be achieving compliance given different process lines, smokestacks, discharge pipes, etc.). Regardless of the final criteria used, they should be clear enough that there is no dispute as to whether or not a facility is in compliance.

Compliance assurance and enforcement activities should also take into consideration facilities' compliance records. This could help EPA and state, tribal and local permitting agencies to better target inspections, enforcement actions and penalties based on the severity of the violations. For smaller facilities with labelling or paperwork violations, EPA may target technical assistance at

them (e.g., in cooperation with universities or other programs which provide such assistance) so as to improve their understanding of permit requirements and how to comply with them.

On the other hand, facilities whose non-compliance has the potential to threaten human health and the environment more significantly, should be much higher priorities for reporting, monitoring and attention. In the most severe cases, EPA or the permitting authority should reserve the option of halting a plant's operations until it complies with essential permit conditions. This targeted enforcement approach should make it possible to respond to the worst threats in a more immediate fashion.

IV. Agency Performance

No reform can ever permanently solve every problem with a particular system, because problems and public perceptions of them are constantly evolving. Therefore EPA, state, tribal and local permitting programs should institute systems of continuous evaluation and improvement of their own performance.

As illustrated in Figure II, this system would involve several steps:

1) **Identify performance standards for the permit program**: the PIT's Performance Measures Task Force has developed draft standards by which permit program performance could

FIGURE II

be measured, including timeliness of permit reviews, permit backlogs and customer satisfaction.

2) **Determine how these standards would be measured**: e.g., design surveys to measure customer satisfaction. As part of EPA's Customer Service efforts, surveys have been drafted for citizens involved in permitting decisions, permit applicants and delegated/authorized permitting agencies. Customer service standards have also been drafted based on these surveys. Surveying will begin in Federal Fiscal Year 1996. This step needs to be carefully designed to avoid burdening agencies with tedious "bean-counting" exercises. Streamlined ways of recording performance, including user-friendly electronic means, are encouraged.

3) **Compile performance data**: e.g., conduct surveys, measure performance rates, etc.

4) **Report to public on permit program performance**: compile results into a regular (e.g., yearly) report on performance which is clearly understandable and easily accessible, in print as well as on the Internet. Establish mechanisms to receive public feedback, via Internet, phone and mail. Permit programs may also decide to hold public meetings or focus groups to obtain more feedback, as appropriate.

5) **Review permit program standards, processes and approaches based on evaluation results and public feedback**: permit programs should conduct periodic program evaluations based on the input received from this process. They should determine what changes to implement in their programs to respond to any shortcomings in performance. Performance standards will also need to be periodically revised to respond fully to program needs.

6) **Revise permitting program processes and approaches**: implement the changes that have been identified and return to step one of the continuous performance improvement system.

The performance of EPA and other permitting agencies, like the performance of permittees and the actual condition of the environment, needs to be publicly reported in clear, understandable terms. By bringing these types of performance into the light,

public performance-based permitting will focus attention on the results of environmental permitting systems, and use those results to continually make these systems more responsive and environmentally protective.

ADMINISTRATIVE STREAMLINING TASK FORCE RECOMMENDATIONS

Goal for Administrative Streamlining

The goal of the Administrative Streamlining Task Force was to improve the permit process by analyzing successful permit programs across the country and recommend permitting process changes (guidance, policy, regulations, procedures) designed to apply these successes more broadly.

Recommendations

1. Create a predictable, user-friendly federal permit process

a. Information and Process

Currently, EPA permitting programs have different processes that follow different timeframes (See Attachment 1). The lack of coordination among these programs, and the lack of predictability created by this situation, can unnecessarily complicate the permitting process for permittees, state, tribal and local permitting authorities, and the public. In addition, EPA's oversight of delegated or authorized permitting programs varies by Region and media program.

Therefore, EPA should to the extent consistent with its various statutory authorities develop one unified, standard timeline model applicable to all of its permitting programs (it may be necessary to have one model for new permit applications and permit modifications and another for facilities that are required to upgrade to meet new requirements). It may also be necessary to have different timelines based on the type of permit (e.g. major or minor). This model timeline is intended to be used as a management tool for permitting agencies to set realistic and desirable time goals; if goals are not being met, permitting agencies should review their processes to identify and eliminate inefficiencies and unnecessary or unproductive procedures.

In the short term, one uniform model should be approved by EPA as non-binding guidance for state, tribal and local permitting

authorities. Where allowed by statute or regulation, EPA permitting programs should provide sufficient flexibility to allow authorized permitting authorities to adopt this timeline in lieu of specific program timeframes.

Appendix 2 contains a proposed uniform timeline model. Under this model, the timeline would be subject to extension if the applicant consents to negotiate permit terms, if the applicant must submit further information, or if the permitting agency determines that the project is unusually complicated. The process should include a mechanism that clearly identifies the reason for any time extension and whether the applicant is responsible for any actions that would re-start the clock on the timeline. The applicant's failure to submit needed information would constitute a basis for denying the application. The timeline could include options for enforcing the time limits and "calling the question" on the permit action, as determined by each permitting jurisdiction.

Several options for "calling the question" on a permit application were considered by the Task Force. One option would include a refund of permit fees for failure to meet the timelines. A few states have implemented this approach. Another option would be a judicial cause of action or other administrative remedy to compel agency action on the permit, if the controlling statute made meeting the deadline a non-discretionary duty. A third option would be to allow a permit to go into effect automatically if the agency does not meet the deadline. This option is inconsistent with current law and would be contrary to the PIT's recommendations to enhance public participation and is therefore not endorsed by the PIT. In addition, this option may also foreclose the ability of the permitting authority to adequately evaluate appropriate considerations under Title VI of the 1964 Civil Rights Act, such as, any disproportionate impact of the permit action on minority communities.

Permits that are issued by the Regions or by state, tribal or local permitting authorities that are authorized pursuant to federal law would have legal impediments to some of the above options. Most importantly, if the last option caused the elimination of required public participation the resulting permit would not comply with federal law.

The proposed timeline includes a notice to the public of either the complete application, the proposed draft permit, or both, depending on program needs and statutory constraints.

Implementation (short term): Each EPA Program office should release

a uniform model timeline (by permit type - major/minor) to its authorized authorities as guidance, and establish, as policy, that Regions and state, tribal and local permitting authorities, to the extent allowed by statute and regulations, will be allowed to follow this timeline in lieu of specific EPA permitting program timeframes that may otherwise conflict with it.

Implementation (long term): A high-level cross-office team should be established in FY96 to reach consensus on what changes should be made to EPA statutes, regulations, policies, guidances and processes so as to bring all major EPA permit programs under a single uniform timeline and oversight approach. This team should also define the resource burden of making these revisions along with the potential savings from reducing EPA oversight of delegated or authorized agency issued permits. The PIT has already identified some of the statutory and regulatory barriers to a uniform timeline. The proposed team would, with stakeholder input, agree on the specific changes to be made and work with Program offices to ensure that these changes are implemented or proposed for statutory change.

b. Single Point of Contact for All Media Permits

In addition to basic level, point of entry offices, each permitting agency should assign senior permitting personnel to projects in which a facility receives multiple permits. This can help ensure cross-program permit coordination and provide each permittee with one senior staff contact to coordinate the resolution of any cross-cutting issues. In cases where state/tribal/local permits and federal permits are being issued to the same facility, permit coordination is also needed between the permitting agencies.

Example: EPA Region 6 multi-media permit teams.

Implementation: We recommend that a PIT workgroup draft policy and operational guidance, to be issued by EPA's Administrator, for Regional Administrators to implement a single point of contact approach during FY 1996.

2. Encourage and Implement Flexible Permitting Projects

EPA and state, tribal and local permitting authorities should create opportunities for facilities to negotiate alternative permit conditions that maximize operational flexibility and encourage pollution prevention while maintaining or increasing levels of environmental protection. Each permitting agency should identify

those situations where a modification can occur without review. Presently, initiatives such as Project XL, the Common Sense Initiative (CSI), the Environmental Technology Initiative (ETI) and the Clean Air Act Title V permit program are piloting approaches and mechanisms to promote greater flexibility in permits.

Examples of flexible permits:

- Intel Corporation, U.S. EPA, the Oregon Department of Environmental Quality, and the Pacific Northwest Pollution Prevention Research Center developed a flexible Title V operating permit with the goal of accommodating shifts in emissions within the facility and encouraging pollution prevention, while preserving the enforceability of the Clean Air Act's requirements.
  Under ETI, EPA Regions 1, 9 and 10 are working with the Office of Air and Radiation; the Office of Prevention, Pesticides and Toxics; and the Office of Policy, Planning and Evaluation to expand the Intel flexible permitting experience to several other states and industries. This national expansion of the Intel experience will provide EPA and the States with valuable information and will help ensure the development of enforceable Title V regulations that allow for permit flexibility and the incorporation of pollution prevention and innovative control technologies.

- EPA and Minnesota Pollution Control Agency worked with 3M corporation to develop a flexible permit which, while ensuring all necessary environmental protection, allows the source to make physical and operational changes without triggering major new source review requirements under the Clean Air Act.

Implementation: EPA should, through Regional Offices, serve as a clearinghouse for good examples of flexible permits and serve as a resource to state, local and tribal governments and the public in implementing these approaches. This proposal should be implemented through the electronic clearinghouse recommended in 4d below, as well as through the Regional Permit Process Assistance program recommended in 5 below.

3. Tier Permitting Programs in Proportion to Environmental Significance:

EPA should establish a policy and guidance to encourage state,

tribal and local permitting authorities to tier their permit programs according to the environmental significance of facilities' polluting activities. Such a policy should allow agencies to reduce monitoring or other reporting requirements for less significant activities so agencies can focus on the actions with the greatest potential for environmental impact.

Suggested ways to do this include: increasing thresholds for small emissions; exploring use of impartial third-party certification systems; exempting certain activities; requiring less frequent/consolidated reporting; expediting the review for low tier permits; and providing incentives for good compliance records and for use of pollution prevention approaches. Some of these approaches would require regulatory and possibly statutory changes in order to be implemented.

Examples: A number of states are moving towards tiered permits, to reduce permit process requirements in accordance with the location of the project, environmental significance of the impact imposed by the project, etc. Examples include California Tiered Permitting for hazardous wastes, Minnesota's Air and RCRA Programs, and the Massachusetts 401 Certification Program.

Implementation: As an FY96 project, a PIT workgroup should conduct an analysis of current approaches to tiered permitting, and then, based on this analysis, draft EPA policy and guidance promoting such approaches where appropriate. This analysis should also focus on projects such as Project XL, to determine where principles applied to individual facilities (e.g., pollution prevention incentives) can and should be applied to whole classes of facilities.

4. Establish Computer Systems

a. Integrated facility data bases with Geographic Information System (GIS) interface

Permitting authorities should combine cross-media information for each facility into a single database which provides instant access and search capability. EPA has initiated this task at the national level through the efforts of the Key Identifiers Workgroup.

Example: Massachusetts DEP's Environmental Protection Integrated Computer System (EPICS) system takes information supplied by 12 separate MADEP divisions, such as air emissions, hazardous waste and water supply and combines it into a single database. This gives

MADEP employees instant access to all the agency's information and allows them to search for data on a facility by entering its name and location. This and a two-year cross-training program have allowed inspectors to do multi-media inspections. EPICS is currently developing an interface with GIS to help site new businesses and to assess cumulative threats to resources for targeted compliance/enforcement.

b. Permit software systems

EPA should collect and make available state, tribal, local and regionally developed software for a menu-driven system to train permit-writers and assist them in drafting permits. The system should contain and cross-reference all appropriate regulations and procedures, and provide a mechanism for tracking.

Examples: Maryland/Region 3 software program for NPDES permit writing and tracking. Also, the Indiana Department of Environmental Management has begun a project to develop a menu-driven, expert system to help permit writers in drafting permits. This project was started in an effort to provide training to new permit writers in the state. The expert system takes permit writers through the process of writing a permit, cross-references all appropriate state regulations and internal procedures, and results in a draft permit. This system could also be made available to permittees and the public.

c. Electronic permitting and reporting

EPA should facilitate permitting authority efforts to provide permit application forms on disk or by dial-in, issue permits electronically (while providing for public notice, access and opportunity to comment), develop permit tracking capability, and establish electronic facility-based compliance reporting. Model permits (like the RCRA model permit) in electronic format may be provided to applicants to fill-out as a supplemental part of their permit application if they choose to do so. This can greatly reduce the time required for a permit writer to transform permit application proposals into permit conditions. The permit writer can also easily verify that the permit conditions proposed by the applicant meet all applicable requirements. The use of electronic exchanges in permitting will not replace the need to continue to provide appropriate permitting information through non-electronic means.

d. Electronic database/clearinghouse

EPA should establish, provide access to and maintain an electronic database/clearinghouse which contains relevant information necessary for permit writers in all media, including: pollution prevention, toxics use reduction, pollution allocation/Total Maximum Daily Load (TMDL) models, site specific protocols, etc.

Implementation: Recommendations 4a-c above should be referred to EPA's Office of Information Resource Management to identify existing capabilities, develop resource needs and schedules to adopt across media Program offices. Recommendation 4d should be referred to Research Triangle Park's Internet Group to identify existing capabilities, develop resource needs and a schedule to allow adoption across media Program offices.

5. Regional Permit Process Assistance

Under the National Environmental Performance Partnership System agreed to between EPA and the states on May 17, 1995, EPA will be reducing direct oversight of authorized state programs. The Regions are in an excellent position to help the states improve their permitting processes by keeping abreast of the latest changes that are being implemented, and sharing that information with the states. Working together, a Region and state would identify areas in need of improvement in a permitting process and evaluate existing approaches that have been utilized to help address the identified area.

Implementation: As an FY96 PIT pilot project, a Region and a state (possibly Texas) should develop an approach whereby the Region would assist the state in evaluating a permitting process. The purpose of this evaluation would be for the Region to help identify improvements that could be implemented. The Region would make use of national clearinghouses and data bases (see recommendation 4d) to help identify approaches that could be of assistance to the state. The Region could also provide any needed training to the state. The state would make the final decision on implementing any improvements.

The Region (with input from the state) would prepare a report on the lessons learned from this pilot and, working with a PIT workgroup, propose an approach that other Regions could utilize in providing assistance to states and tribes in their respective region.

Attachments: 1. A table of current permit program timetables
2. A proposed uniform timeline for all major and

minor federal permits (see Recommendation 1.a., above)

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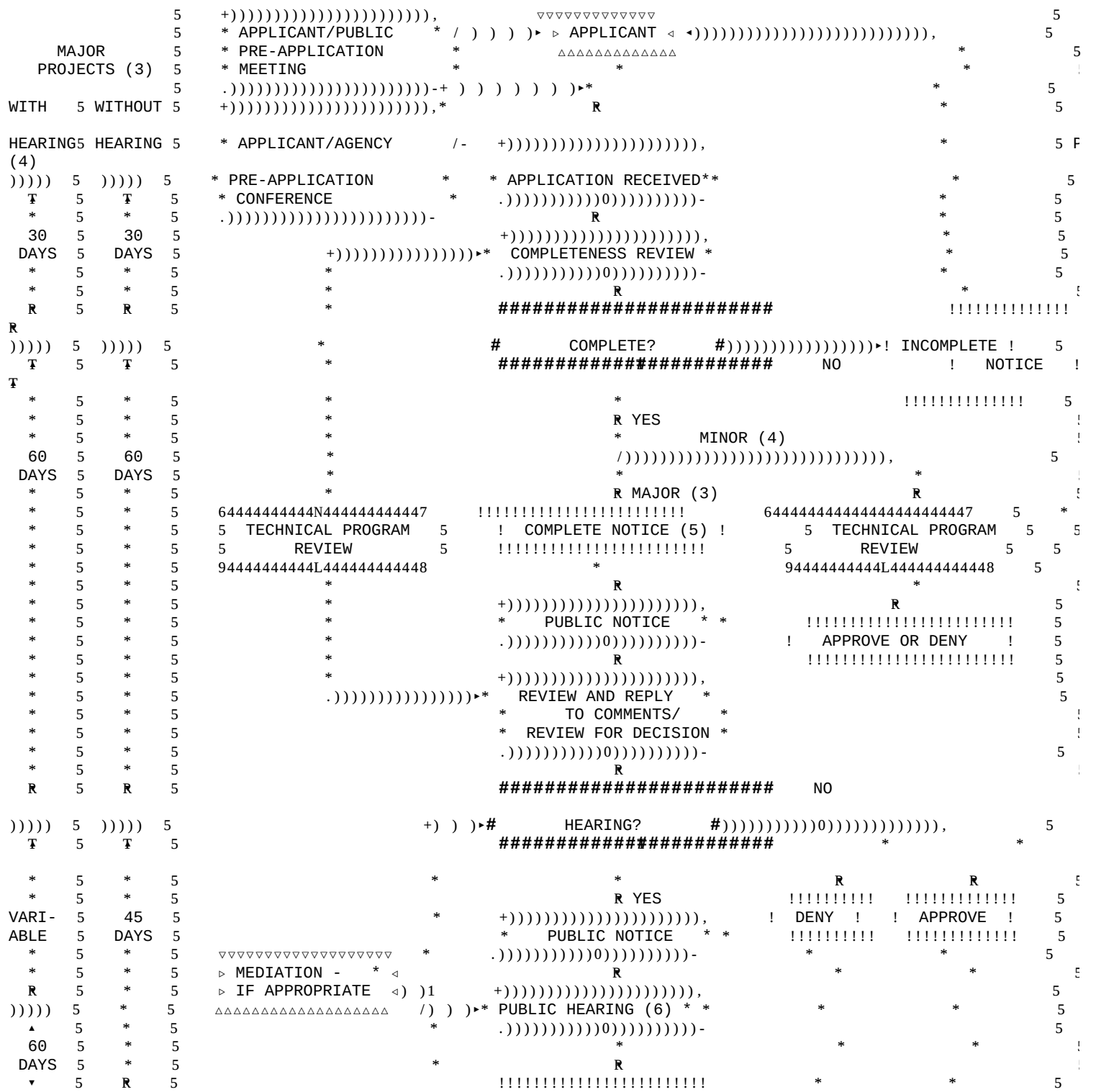
ATTACHMENT 1:
FEDERAl PERMIT PROGRAMS
CURRENT TIMETABLES

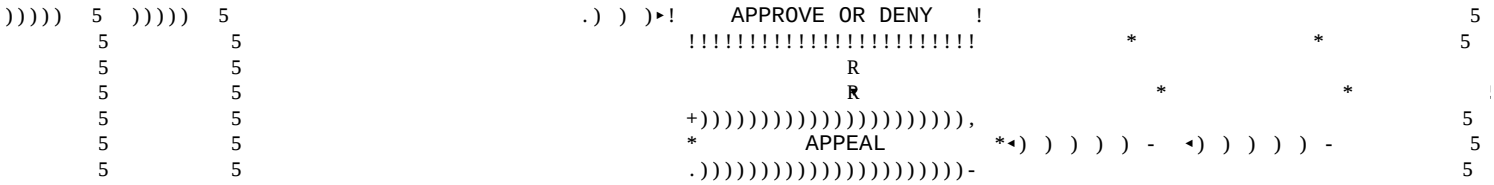
STATUTE	PUBLIC NOTICE REQUIREMENT	PUBLIC HEARING REQUIREMENT	PERMIT DURATION
RCRA[1]	Notice of draft permit in newspaper and radio. 45 day comment period.	30 day public notice. Required if written opposition to draft permit.	10 years, review every 5 years for land disposal facilities. May be reviewed/modified at any time.
Prevention of Significant air quality Deterioration (PSD)	Notice of draft permit in newspaper. 30 day comment period.	30 day notice. Silent on threshold.	No expiration date. New permit required to modify.
Clean Air Act Title V	Notice of draft permit in newspaper. 30 day comment period.	30 day notice. Silent on threshold.	Up to 5 years. 3 types of modifications follow new permit process.
NPDES	Notice of draft permit in newspaper. 30 day comment period.	30 day notice. Silent on threshold.	5 years.

UIC	Notice of draft permit in newspaper. 30 day comment period.	30 day notice. Silent on threshold.	Classes I & V: Up to 10 years. Classes II & III: Up to operating life.

[1] These requirements do not include the changes for enhancing public participation included in RCRA Expanded Public Participation Rule.

ATTACHMENT 2:
AUTHORIZED & DELEGATED PERMIT PROGRAMS
PROPOSED UNIFORM PERMITTING PROCESS (1,2)





NOTES

* Opportunities or requirement for public participation.

(1) Time frames can be waived with mutual consent, or if applicant is unresponsive.

(2) Procedure to apply to all programs except siting.

(3) Major projects receive full public participation opportunity. They are the projects most likely to have significant environmental impact.

(4) Minor projects receive internal review only. They represent minimal or no environmental threat.

(5) "Complete" notice can be published when application is determined to be complete, or when draft permit has been agreed on, or at both milestones.

(6) Public hearings may be evidentiary or administrative, at states' option.

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ALTERNATIVES TO INDIVIDUAL PERMITS
TASK FORCE RECOMMENDATIONS

A. Background/Approach

The Permits Improvement Team is exploring **alternatives to individual permits** in order to deliver government services more efficiently, target EPA resources at environmental priorities, and encourage pollution prevention. EPA's National Performance Review included the goal "Target Permit Priorities", with the following objectives:

- Issue individual permits only where there is a high degree of environmental concern and where it is necessary to apply tailored or site-specific requirements.

- Use alternatives where possible, such as compliance with self-implementing regulations (e.g., permit-by-rule) and general or class permits.

This report refers to six different types of permitting, defined below:

Individual permitting refers to authorization granted to a person through an adjudicatory process on a site-specific basis. Typically, the permittee initiates the individual permitting process through submission of an application. The permitting agency then develops a proposed permit (which may or may not be developed in coordination with the permit applicant) and publishes notice of the proposed permit for public comment. After consideration of public comments, the permitting agency will issue a final decision on the permit application. In some instances, permitting agencies provide an opportunity for administrative appeal of a final permit before it becomes effective.

General permitting refers to a rulemaking-type process where requirements are developed based on a prototype facility. The permitting agency develops a general permit applicable to facilities or activities of substantially similar nature. General permit authorization is granted after a person registers with the permitting authority its intention to comply with the terms of the general permit. The general permit rulemaking process may be initiated by the permitting agency or by petition to that agency. Depending on programmatic needs and legal requirements, a hearing may be required on whether the general permit applies to a particular facility (or activity). Typically, general permits are

issued for environmental activities of "medium to low" concern where there is little variability from the prototype facility or activity considered in development of the general permit. Under the Clean Water Act, general permits are widely used, particularly for storm water discharges. Public involvement occurs at time of development of the general permit.

Hybrid permitting refers to a combination of general permitting and individual permitting. Though the permittee is subject to a single permit, the permit terms with which the permittee must comply are developed in part through rulemaking (general permit) and in part through adjudicatory processes to determine site-specific requirements (or to comply with site-specific notice or applicability requirements). Hybrid permitting is not currently used by EPA, so there is no established procedure, but such a process could be established through modification of the general permitting process. Hybrid permitting may be more appropriate than general permitting where there is greater variability from the prototype, or where there is a statutory requirement for site-specific hearings.

Permitting-by-rule (PBR) refers to authorization that does not require subsequent action either by the permit applicant or the permitting authority. For certain RCRA requirements, EPA has issued permits-by-rule when compliance with a permit under one statute is "deemed" to be permitted under RCRA. Alternatively, a general permit that does not require registration may be considered to be a permit-by-rule.

***De minimis* exemptions** to permitting refers to the regulatory exclusion of an activity that might otherwise fall within the scope of activity regulated by a statute. Application of the de minimis exemption theory is subject to some legal restrictions.

Conditional exemptions refer to activities which are not subject to permitting if the conditions of the exemption are met. Conditional exemptions would be used where it is important to establish some "non-permit" substantive standards; e.g., a standard of performance or management practice. Conditional exemptions may represent an enforceable means to establish that a facility/site/source falls below some "applicability threshold" for a given permit program (such as a de minimis pollution threshold). Conditionally exempt activity is not subject to permitting, but is subject to some enforceable requirement. The conditional exemption theory has not yet been tested in the courts.

B. Methodology for Choosing Recommendations

This Task Force's recommendations were based upon the following criteria:

- Issue permits only where there is a real or potential adverse environmental impact and the regulatory agency needs to be involved (add value) in developing proper controls.

- Issue individual permits only where there is a potential significant environmental impact or high degree of variability in regulatory requirements at individual facilities.

- Involve the public in the development and implementation of any alternatives to individual permits.

- Ensure adequate compliance and enforcement activities where alternatives to individual permits are developed.

C. Recommendations

These recommendations need to be implemented by the applicable EPA Headquarters permitting program. As part of that implementation, each Program office needs to review their legal authority for utilizing alternatives to individual permits. If the statutory authority exists but current regulations restrict the use of alternative approaches, the Program office will propose appropriate revisions.

GENERAL RECOMMENDATIONS

1. Each Program office should formally consider the appropriateness of using alternative permit approaches. Consider the degree of environmental risk, level of public interest, site variability in application of requirements and duplication of state, tribal, and local permits in establishing permitting approach.

2. In administering EPA-issued permits, each Regional office should consider the performance of state, tribal and local permit programs that may regulate the same or similar activities. Regional offices may appropriately provide a less rigorous level of review in those jurisdictions where the state, tribal or local permitting authority provides equivalent protection. In some cases, where a facility may operate lawfully without a federal permit, it maybe

appropriate for the Regional office to place lower priority on issuing federal permits in such jurisdictions. Where the facility is required to have a federal permit, EPA Program offices should investigate the development of general permits that reference the state, tribal, or local permits.

This recommendation does not solve the underlying problem of authorizing state, tribal and local permitting programs that provide a substantially equivalent program but not identical to EPA's approach. Each Program office should revise their regulations to streamline the authorization process and provide for greater flexibility where allowed by statute. If a statutory barrier exists, the Program office should seek revisions to the statute to provide clear direction on when authorization can occur.

3. Each EPA Program office should develop and maintain a clearinghouse of permit alternatives being developed and used in federal and state/tribal/local programs throughout the country. The Program offices should consult with their state, tribal and local counterparts to determine the most appropriate information to provide, given available resources. State, tribal and local permitting programs are encouraged to submit copies of any alternative permit approaches in electronic form for ready use by other permitting authorities interested in pursuing similar approaches.

PROGRAM SPECIFIC RECOMMENDATIONS

1. Stormwater - National Pollutant Discharge Elimination System (NPDES)

a. The Task Force agrees with the Office of Water's ongoing permit reform efforts for Phase I and Phase II, conducted under a Federal Advisory Committee Act (FACA) charter, and recommends they be continued.

b. The Task Force agrees with the **further** development of general permits as part of Office of Wastewater Management’s (OWM) projected permit improvements in the NPDES program in the final 1992 Non-Construction Industrial permit and the proposed Multi-Sector stormwater general permit and recommends they be continued. Specifically;

- The development of general permit language that

emphasizes pollution prevention (P2) and Best Management Practices (BMP)in the Non-Construction Industrial permit and the Multi-Sector permit.

- The establishment of appropriate monitoring requirements, based on industry type, water quality, or capability to implement BMP.

c. The Task Force recommends the continued use of the clearinghouse for general permits.

d. Where non-approved states, tribes, or localities are issuing substantially similar permits, EPA Regions should defer to those permitting authorities by prioritizing permitting actions to focus on non-approved permitting authorities without substantially similar programs.

2. NPDES - Process Wastewater

a. Because of the need to control specific dischargers, individual permits should be maintained for water quality limited areas, where Total Maximum Daily Loads (TMDL's) are necessary or wherever specific conditions to be addressed in a permit are not amenable to a general permit.

b. Permit duration should be increased from 5 to 10 years or the life of the facility. Under this approach, there should be a provision to allow permits to be re-opened if there are facility, regulatory, or water quality changes. This recommendation requires a statutory change. This increase would be an incentive for states to move toward the watershed protection approach.

c. OWM should develop and expand the use of general permits in non-water quality limited areas and non-TMDL areas through policy directives, development of general permit boilerplates and establishment of a national clearinghouse of general permits.

d. A permit-by-rule (PBR) should be established for de minimis discharges that establishes threshold conditions below which no reporting would be required. They could be based on industry-type, percentage of loading, etc. The rationale for the established PBR for Metal Products should be used to develop de minimis PBR's for other

discharge categories.

Recommend PIT FY'96 Pilot Project with the State of Washington, Region X and OW to develop PBR for de minimis discharges.

e. Overall monitoring requirements should be decreased, but include ambient as well as end-of-pipe monitoring. Ambient monitoring would be used primarily to set permit limits where national technology based standards and state water quality based standards have not achieved environmental goals.

The PIT recommends a Pilot Project be conducted by OW, with a Region and State, to determine achievement of program goals.

3. Toxic Substances Control Act (TSCA)

The Task Force's initial recommendations included the consolidation of PCB disposal requirements into the RCRA requirements. However, the current position of the Office of Solid Waste (OSW)/Office of Pollution Prevention and Toxics (OPPT) workgroup evaluating this issue, for a variety of reasons, is to leave the two programs separate but to improve communications to make them more compatible. This Task Force defers to the workgroup on this issue.

The workgroup is identifying options that can be readily implemented to improve the disposal of PCB's, while considering costs to industry, states (unfunded mandates), and EPA. Several potential goals have been identified to help direct the workgroup's efforts:

1. State primacy for the PCB disposal program (one stop shopping) (may require statutory change);
2. Consolidation of hazardous waste requirements (avoid program duplication); and
3. Utilization of EPA grant money for state actions (PCB and hazardous wastes).

The Task Force recommends that the PCB combustion authorization requirements be incorporated into the Air permit program if legally permissible. Other portions of the TSCA program would remain in OPPT. This recommendation is consistent with the recommendation below concerning the Resource Conservation and Recovery Act (RCRA) combustion program. This recommendation avoids the problems

associated with incorporating the PCB disposal program into RCRA, but would place all permitted air emissions under one program.

The PIT recommends an OPPT and Office of Air and Radiation (OAR) workgroup be formed to develop appropriate procedures.

4. Safe Drinking Water Act - Underground Injection Control (UIC) Program

a. Shallow injection wells (Class V wells): Continue use of authorization by rule, which has been granted to all Class V wells, providing that they comply with certain minimal requirements (e.g., well inventory) unless the well may endanger underground sources of drinking water.

b. Injection of fluids related to oil and gas production (Class II wells): Where appropriate, continue use of area permits; promote use of non-individual permits by authorized permitting authorities.

c. Individual permitting should continue for Class I wells (deep wells for industrial, municipal and hazardous waste).

5. RCRA Permit Program (see attachment for more detail):

The PIT specifically notes that there are regulatory or statutory barriers to some of the approaches listed below. The Agency's ability to implement each of these options under the current law would need to be investigated further as these options are developed in more detail.

RCRA Base Program

a. Maintain individual permits for facilities requiring operating and post-closure land disposal permits.

b. OSW should establish a general permit boilerplate and promote the use of general permits for non-commercial storage or treatment facilities, including, for example, laboratories. The general permit conditions may need to be supplemented, in some cases, with site-specific conditions identified by the permitting authority or through local public participation. In this situation the permit would be a hybrid permit.

PIT FY'96 project to pilot the use of general permits in the states of California and Texas with Regions VI and IX and OSW.

c. Extend the generator storage time frames from 90 to 270 days for laboratories as part of regulatory re-invention.

d. For hazardous waste combustion facilities, Regional offices should incorporate RCRA requirements into the Air permit program, where both apply; a facility's Air permit would address both Air and RCRA combustion and emission requirements (this is one alternative provided for in EPA's proposed Hazardous Waste Combustion Regulation, Subpart O). Other RCRA requirements (e.g. storage and non-thermal treatment, corrective action) would be addressed through either an individual, general or hybrid permit. This recommendation should be implemented after the proper regulatory authorities are in place. Revised RCRA and CAA regulations are expected to be proposed in March 1996.

RCRA Corrective Action

a. Allow a facility to perform corrective action through a state/EPA order cross-referenced in the permit, or through an individual, general or hybrid permit.

b. Prioritize the issuance of corrective action permits and orders by focusing on state programs that are not authorized and that do not have substantially similar cleanup programs. States with substantially similar programs should be a lower priority. The de-coupling of corrective action from RCRA permitting is being considered as part of the Subpart S regulations (see Advanced Notice of Rule Making - expected to be issued 4/96) and Post-Closure rule (Subpart C) proposal. Under this approach a Region would be relying upon another agency to serve as lead in this situation.

c. EPA should focus the majority of its corrective action resources on states without substantially similar cleanup programs. To achieve maximum overall environmental benefit, EPA should also explore allowing EPA RCRA resources to be shifted to support states in clean-up of higher state priority non-RCRA facilities. The legal authority to implement this recommendation needs to be

evaluated.

d. Subpart S needs to provide incentives for performing clean-ups by allowing conditional exemptions from permitting for:

- On-site storage of contaminated media and off-site storage and transfer of clean-up waste, especially from spill response activities,

- Non-RCRA facilities performing voluntary clean-ups.

e. Low-priority RCRA facilities should be allowed to conduct voluntary (early) corrective action through general or hybrid permits, memoranda of agreement between the facility and the permitting authority that achieve defined performance standards, or through amendments to the interim status regulations. There may be obstacles to using memoranda of agreements, since they would not provide legal protection to a facility that is required to obtain a federal permit.

f. Investigate third-party certification of general and hybrid permits for hazardous waste management that is generated through corrective action activities. (See Administrative Streamlining Recommendation #3, page 23, for broader recommendation concerning third-party certifications.)

PIT recommends review of MA initiative to utilize third party certification to determine if it is appropriate in RCRA.

g. Fast-track the Hazardous Waste Identification Rule (HWIR) and Definition of Solid Waste Rule, to limit regulation to wastes that are truly hazardous, allow general or hybrid permits to regulate recyclers and utilize the HWIR media rule concept of remediation management plans (RMP) for off-site storage and treatment of remedial waste.

6. Air - New Source Review (NSR) permit program:

a. The Task Force agrees with the Office of Air Quality Planning and Standards (OAQPS) NSR reform efforts, particularly the following;

- Implementing plant-wide applicability limit (PAL) policy.

- Allowing states more flexibility to match the level of permitting effort to environmental significance. This recognizes that there may be facilities which do not require permits at all.

- Including special provisions to encourage the use of innovative technologies.

- Acknowledging and promoting pollution prevention activities.

If the NSR reforms do not receive stakeholder support, consider establishing a PIT workgroup to conduct an independent evaluation and develop recommendations.

b. Develop a more expansive definition of minor sources through the use of the following:

- Re-define the potential to emit to recognize the inherent operating limitations in defining this concept. The current definition is not realistic in addressing the highest environmental priorities.

- Develop and promote the use of general permits by preparing boilerplate language for applicable sources and establishing a national clearinghouse of general permits.

c. State, tribal and local permitting authorities should establish additional de minimis levels for selected minor sources under which no permit would be required, in conformance with existing regulations. This will provide that only true health and environmental risks require permits.

7. Air - Title V permit program:

a. The Task Force supports the National White Paper and Supplemental Part 70 proposal, and recommends:

- Evaluating techniques to take inherent operating limitations into account in determining potential

to emit.

- Investigating methods to simplify the renewal process to allow for automatic renewal upon recertification that no facility changes have occurred and no new requirements have come into effect since the initial permit issuance.

b. Develop and promote the use of general permits for sources with low actual emissions by preparing boilerplate language for applicable sources and establishing a national clearinghouse of general permits.

PIT recommends a FY'96 pilot project with the State of Iowa, Region VII and OAQPS to develop general title V permits (e.g. for paint booths). This project should be coordinated with the ongoing ETI Title V project.

c. Allow a self-implementation alternative for facilities with actual emissions of less than 50% of applicable standards.

- Implement flexible permits, through the use of plant-wide applicability (PAL) limits.

- Allow states more flexibility in deciding the most effective monitoring methods and controls.

d. Allow state, tribal and local permitting authorities to establish additional de minimis levels for selected minor sources under which no permit would be required. This will provide that only true health and environmental risks require permits. For example, in MA, emissions below 1 ton/year do not require a permit.

D. Attachment

A more complete discussion of the RCRA proposals follows.

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Attachment

RCRA Alternative Permitting Recommendations

Task Force recommendations do not cover all aspects of RCRA permitting, but highlight areas both where continued use of individual permits seem most appropriate, as well as areas where alternatives may be particularly useful. Also, as is the case with some recommendations in other programs, there are regulatory or statutory barriers to some of the approaches listed below. The Agency's ability to implement each of these options under current law would need to be investigated further as these options are developed in greater detail.

RCRA Base Program

1. Continued Use of Individual Permits

The Task Force recommends continuing to use individual permits for facilities requiring operating and post-closure land disposal permits. Although some aspects of these facilities could be regulated by general permits or other alternatives to individual permits, the Task Force felt that the potential environmental impacts of these facilities particularly warranted regulatory attention and public comment on an individualized basis.

The Task Force also recognized that combustion facilities (incinerators, burners and industrial furnaces) warranted highly focused regulatory and public attention on an individual basis. However, efficiency could be obtained by having the impacts of these facilities reviewed in concert with air permitting. If so, the RCRA program could issue a general or hybrid permit to address any additional technical requirements not covered by the Clean Air Act permit process (e.g., corrective action), and could also address permit requirements for any ancillary units (e.g., storage units).

2. Ninety-day Accumulation and Treatment for Generators

The Task Force also recommends providing guidance or otherwise clarifying the enforcement discretion available when a facility exceeds applicable time frames or violates any of the management conditions referenced in 40 C.F.R. § 262.34. The Task Force recommends that it be made clear that enforcement against such a facility may be handled as a violation of the specific requirements of § 262.34 (e.g., storage over 90 days, failure to mark

containers, etc.) rather than as a failure to have a permit. Some prior agency statements have suggested that a facility that failed to mark a container would necessarily be subject to full permit requirements.[3]

3. Third Party Certifications

The Task force recommends consideration of the use of third party certifications both for corrective action and for hazardous waste management requirements. Where, for example, a regulatory agency might otherwise be inclined to require extensive regulatory review of a corrective action, unit design, contingency plan, or other RCRA-regulated activity in the context of an individual permit review, the agency might be able to shift that activity to a general or hybrid permit if the facility notification were accompanied by a third party certification that indicated comparable review has been conducted by an independent third party. There is a legal concern, however, presented by EPA's need to defend information and conclusions in the permitting decision that EPA itself did not develop.

RCRA Corrective Action

1. Corrective Action

Where a state with a well developed cleanup program is authorized for the base RCRA program, but has not yet become authorized for corrective action, the Task Force recommends that EPA consider issuing a "rider" general permit that would require treatment, storage or disposal (TSD) facilities receiving state RCRA permits to satisfy corrective action obligations by complying with the requirements of the state's cleanup program. For this approach to be legally defensible, EPA would need to explain the basis for finding that the state controls satisfy federal corrective action requirements. Another option would be for the federal permit to set a schedule of compliance for corrective action measures contingent on completion of the state cleanup in order to see

[3] See, e.g., In the Matter of Humko Products, Docket No. V-W-84-R-014 (March 7, 1985) at p.20 (facility storing waste over 90 days "is subject to...the permit requirements of 40 CFR Part 270"), p. 26 n. 12; Permit Policy Compendium No. 9453.1989(05), Letter from Sylvia Lowrance to Stephen Axtell, April 21, 1989 (generator who fails to mark accumulation date "has not met the pre-conditions for the exemption from permitting requirements and is an operator...subject to permit requirements").

whether further corrective action measures are necessary at that point. For this approach to be effective, EPA must be willing to defer to the State's overall site prioritization system. This may mean that there is less near-term cleanup at RCRA facilities, if there are higher priority non-RCRA facilities.[4]

Under this approach, EPA could then focus its resources and attention on corrective action in states without cleanup programs and on high priority RCRA facilities not otherwise being addressed by the states.

General or hybrid permits could include provisions that authorize low-priority TSD facilities not otherwise receiving regulatory attention to conduct early cleanups, subject to performance standards identified in the general permit (or through use of Memoranda of Agreement between the facility and permitting authority). Again, however, there may be legal barriers to these approaches under the current statute and regulations. An analysis of the possible alternatives to individual permits for corrective action and the legal barriers to those alternatives is ongoing within the PIT and its subgroup on general permits.

Another way to ensure that facilities receive federal permits would be for EPA to issue a permit that simply "copies" the state's permit, relying on the state's supporting record. EPA would not develop a record for the permit independently. In this approach, the facility would obtain a federal permit and would not be liable for operating without a permit. However, this approach would be viable only to the extent EPA feels comfortable that it will be able to defend against any permit challenges based on a record developed by a separate entity (i.e., the state). The issue of deferral to the state, in general, is one that is still being examined by the PIT subgroup.

2. Non-RCRA Cleanups

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[4] EPA sometimes currently defers on a case-by-case basis to other cleanup programs in deciding how to address corrective action in a RCRA permit. In considering this recommendation, EPA might also consider whether its current practice sufficiently meets the goals of this recommendation, or whether there are alternative means of achieving a similar result through improvements on existing practice. For example, are there better ways of reflecting this deferral process in the permit than is currently the case.

Many facilities that do not require RCRA permits have the potential to trigger RCRA permit requirements while conducting cleanups, whether voluntarily or under State direction. Many persons have noted that the possibility of subjecting a facility to full RCRA permitting, including fenceline-to-fenceline corrective action for cleanup activity is a disincentive to conducting focused cleanup and conversion of brownfields. EPA is currently developing approaches to many of these problems through the HWIR rulemakings. The Task Force recommends considering alternative approaches to permitting through the following scenarios which may go beyond the HWIR concepts in some applications:

- off-site storage and transfer of cleanup waste, where the cleanup activity is being directed or supervised by EPA or a State regulatory agency ;

- on-site storage of contaminated media (includes voluntary cleanups as well as cleanups under regulatory supervision)(action would be subject to best management practices); and

- activities at facilities not currently subject to RCRA conducting voluntary cleanup.

Of these various options, the last is most expansive, and goes beyond the more limited proposal for on-site storage of contaminated media. The second and third recommendations go beyond the HWIR approaches currently being considered in that they would apply to voluntary cleanups as well as cleanups under regulatory oversight.

DRAFT

ENHANCED PUBLIC PARTICIPATION TASK FORCE RECOMMENDATIONS

A. Background

An important ingredient for improving the permitting process is improving and expanding public involvement in the process. The Enhanced Public Participation Task Force was tasked with developing recommendations for providing opportunities for early and more meaningful public participation, including provisions for addressing environmental justice concerns.

Public participation has many aspects. It can be seen as involvement through participation in the permitting process -- e.g., providing notice of upcoming events, or opportunities for meetings with businesses, communities, and regulating agencies. It can also be seen as involvement through access to quality information -- e.g., businesses need quality information to identify opportunities to prevent pollution and save money, and communities need access to information to participate in decision-making in a meaningful and informed manner.

The Task Force looked into both areas, and developed five recommendations. The first three recommendations discussed in this report focus on short-term products (i.e., ones that might be developed in FY 1996) that are intended to fill an immediate need for information. These products may be used by permitting agencies, industry, and communities alike to (1) learn about potential ways to involve themselves or each other in the permitting process, and (2) find out what types of information are available, and how they can access it. These three recommendations were discussed with stakeholders and modified to incorporate their comments.

The remaining two recommendations were developed based on general public participation discussions that took place during the PIT's stakeholder meetings. These recommendations are good candidate projects for the continuing efforts of the PIT.

B. Task Force Recommendations

1. Develop an "easy reference" guidance for public participation activities.

Description: The purpose of the guidance should be to serve as a valuable reference of public involvement activities. The guidance

should not cover every possible type of activity. Rather, it should serve as a supplement to existing guidance developed by EPA Program offices, trade associations, or environmental groups. It could be used by businesses, communities, and permitting agencies in putting together public involvement strategies appropriate for particular situations. We recommend that the guidance be kept fairly short, perhaps 20 pages, in order to facilitate quick reference. The guidance should consist of three sections: an introduction, a matrix of public involvement techniques, and an attachment with additional reference information.

The introduction should lay out both the purpose and limitations of the guidance. The introduction should also:

- encourage *all* stakeholders -- regulators, facilities, and communities -- to take an active role in opening up the permitting process and promoting meaningful public involvement;

- urge industry and communities to explore innovative public involvement programs, such as the Responsible Care Program (through CMA) and Good Neighbor Agreements (through the Good Neighbor Project); and

- encourage regulators, facilities, and communities to coordinate public involvement activities across media programs whenever appropriate and feasible.

The matrix of public involvement activities should list a wide variety of public involvement techniques, and provide a brief description of the activity (technique), and some of its advantages and disadvantages. Any activity currently required by an EPA Program office will be footnoted as a regulatory requirement. Since final recommendations regarding alternatives to individual permits have not yet been implemented, the easy-reference guidance should not attempt to "tier" public involvement activities by type of permit. The guidance should, however, have a mechanism to help people determine what activities they could use.

For its "first edition," the guidance should identify "Level I" and "Level II" activities. Level I activities are those that should be considered for use in every situation, regardless of the type of permit, type of facility, or level of community interest. Level II activities represent a variety of ways to go beyond basic approaches to public involvement, and should be considered for use

as necessary to meet the needs of the situation at hand. When developing subsequent editions of the easy-reference guidance, the mechanism for "ranking" activities (i.e., Levels I and II) should be re-evaluated to determine if it is still appropriate or if it should be replaced.

The attachment for additional resources should include: (1) the main telephone numbers of all State environmental permitting agencies; (2) the main telephone numbers of all EPA regional permitting offices; (3) a list all of the EPA-sponsored hotlines and information centers, and (4) a recap of the activities required by each EPA media Program office and a list of resources (e.g., guidance manuals) available through those offices.

Implementation: The RCRA Permits Branch in the Office of Solid Waste should take the lead on developing the initial edition of the easy-reference guidance. A draft of the guidance should be shared with a PIT workgroup for review and comment, as well as with the Siting and Public Participation Subcommittees of the National Environmental Justice Advisory Committee (NEJAC).

Hardcopy Distribution: The PIT should distribute copies to its stakeholder mailing list. The PIT should also provide camera-ready copies of the guidance to the Office of Communications, Education and Public Affairs (OCEPA) and to the Office of Regional Operations, State/Local Relations (OROSLR) so they may distribute the guidance to their respective contacts and mailing lists. Furthermore, each media program office at the federal, state, local and tribal levels should also be encouraged to distribute the guidance as widely as possible.

Electronic Distribution: The Enhanced Public Participation Task Force leader should coordinate with appropriate Agency personnel to post the easy-reference guidance on the Internet. Access to the guidance should be provided through EPA's home page as well as through each media office's menus.

Training: The Enhanced Public Participation Task Force should coordinate with the Training Task Force to evaluate potential ways to provide training, if necessary, on techniques included in the easy-reference guidance.

2. Utilize the Environmental Justice (EJ) Public Participation Checklist as guidance to the extent appropriate and feasible.

Description: The environmental justice movement has sparked a lot

of discussion on ways to improve communications and working relations among agencies, industries, and communities. The InterAgency Working Group on Environmental Justice, led by EPA, developed a Public Participation Checklist that lays out ways to identify, inform, and involve stakeholders (e.g., environmental organizations, business and trade associations, civic/public interest groups, grassroots/community-based organizations, tribal governments, and industry). It reflects a combination of: guiding principles for setting up and conducting activities, such as public meetings; specific activities for ensuring widespread and meaningful involvement; and recommendations on how to effectively carry out those activities.

Although the checklist was initially developed in the context of environmental justice, to help federal agencies prepare for the first public meeting to discuss their EJ strategies, it embodies sound principles that apply to public participation for all communities. Therefore, the Task Force recommends that:

(1) EPA (through its Office of Communications, Education, and Public Affairs) should widely distribute the EJ checklist for use as guidance, so that permitting agencies, businesses and the public may benefit from it.

(2) A PIT workgroup continue to coordinate with the Office of Environmental Justice (OEJ) and the InterAgency Working Group on Environmental Justice in order to promote consistency in Agency approaches to enhancing public involvement. The Task Force should forward any suggestions it receives for modifying or enhancing the EJ Checklist to the OEJ and/or InterAgency Working Group.

Implementation: Public Participation Task Force representatives should meet with contacts in OEJ to: (1) review and discuss suggestions the PIT received regarding the Checklist, (2) develop an introduction to accompany the Checklist (describing its origins, etc.), and (3) to plan for further interactions between the two groups. Any changes to the Checklist should be made by OEJ or the InterAgency Working Group, since they originated the Checklist. Their continued "ownership" of the Checklist, and our combined efforts to keep the list current, will help ensure that the two teams continue to work in partnership to address environmental justice concerns, particularly in the context of public involvement. If OEJ (or the InterAgency Working Group) chooses to revise the Checklist, a PIT workgroup could provide assistance.

Hardcopy Distribution: Once the list is revised, OEJ should provide a camera-ready copy of the Checklist to the Office of Communications, Education and Public Affairs (OCEPA) for distribution to its contacts and mailing lists. In addition, camera-ready copies should also be provided to the Office of Regional Operations, State/Local Relations (OROSLR) so they can distribute the Checklist to their contacts and mailing lists. Finally, each media program office at the federal, state, tribal and local levels should be encouraged to distribute the Checklist as widely as possible.

The Task Force assumes that OEJ sends the checklist out to its contacts across the country, and that these contacts include EJ and community groups. In order to target industry for receiving copies of the Checklist, OEJ should provide the Checklist to trade associations for distribution to their member companies.

Electronic Distribution: The Task Force leader should coordinate with appropriate Agency personnel to post the EJ Checklist on the Internet. Access to the Checklist should be provided through EPA's home page as well as through each media office's menus.

3. Develop an inventory of mechanisms that promote access to environmental information

Description: Access to information is an essential component of public involvement. Meaningful, quality information is needed by regulators, regulated industries, and the public alike in order to promote sound environmental decision-making. Within the federal government, offices are revisiting what types of information should be collected and how information may be more readily shared.

An inventory with abstracts of existing sources of information, as well as of the efforts underway to improve quality of and access to information, and the appropriate contact person or office for each, would be a useful reference document. It could be used to inform agencies, businesses and the public of the wide variety of mechanisms available to them.

Development: The inventory of mechanisms should be developed under the direction of EPA's Office of Information Resources Management (OIRM). Identifying and describing the numerous and diverse data systems, information sources, and so on is beyond the scope of PIT resources; however, a PIT workgroup should meet with OIRM to discuss the project and to be available to provide assistance on an as-needed basis.

Primary focus of the inventory should be on Agency automated sources of information (e.g., data systems, bulletin boards), "hardcopy" information sources (e.g., Toxic Release Inventory (TRI) Report), and means of accessing information sources (e.g., through the Freedom of Information Act (FOIA) process, the Internet, via the National Technical Information Service - NTIS). The inventory should also, to the extent possible and feasible, discuss efforts-in-progress (e.g., the Key Identifier and One-Stop Public Access and Reporting Initiative). The inventory should include innovative systems promoted by Program offices to improve community involvement and help empower communities (e.g., Landview II being used by the Office of Solid Waste and Emergency Response). Finally, the inventory should include mechanisms to obtain access to pollution prevention information, such as on-line EPA computer systems like Enviro$ense or the Technology Transfer Network.

The inventory of mechanisms should be presented in an understandable, user friendly manner. In addition, because not every agency, business and member of the public will have electronic access to bulletin board systems and the Internet, proposals for increasing access to information should also include making material easily available in the traditional manners (e.g., printed copies at agency offices, in information repositories, mailed to interested parties, announced in press releases or through radio ads).

Distribution: Distribution of the inventory should be coordinated by OCEPA. The inventory should be available in hardcopy format as well as through the Internet.

In addition, OCEPA should investigate more effective ways to publicize the many sources of information the Agency has, and the avenues to obtaining that information. For example, the Agency develops a thick (over 600 pages!) publication entitled "Access EPA" -- a comprehensive directory with detailed descriptions of the Agency's information resources. Unfortunately, relatively few people know of, or have access to, "Access EPA." OCEPA should look into the feasibility of using innovative mechanisms to more widely and effectively distribute this directory, such as entering into an agreement with a national bookstore chain to get their stores to carry "Access EPA" and/or certain other EPA publications.

4. Explore, and possibly conduct pilots for, the development and use of comprehensive multi-media Community Involvement Plans.

Background: Under the Agency's current regulations, there are

various public participation requirements in each media program area -- hazardous waste, water, and air. The requirements focus on the individual media permit, and are not consistent across programs. In meeting their regulatory obligations for each media permit, industries and regulators alike often create more confusion than clarity among members of the public who, for the most part, do not segment their involvement along statutory lines -- their interests lay with the facility in its entirety. Moreover, having to conduct multiple, yet similar, activities (e.g., one public hearing for the air permit and another for the RCRA permit) imposes an unnecessary burden on a facility; having to keep track of and attend these multiple activities imposes an unnecessary burden on the public. Further exacerbating the problem is the way information about a facility is collected and reported -- also a media-by-media approach. No clear picture of the facility as a whole, its total emissions or releases, its comprehensive compliance record, is readily available.

Discussion: In order to create an environment that truly fosters effective interactions between facilities and their neighboring communities, the Agency needs to make the entire public participation process more user-friendly. Using Community Involvement Plans (CIPs), in concert with some programmatic adjustments from other PIT Task Forces, could accomplish this objective.

It is envisioned that a facility, in close coordination with community stakeholders, would be responsible for drafting a CIP. The elements of a CIP would most likely vary, although certain core elements may ultimately be defined. In essence, the CIP would serve as a vehicle through which a facility and a community could form a multi-media approach tailored to meet their particular situation. They could address issues on an aggregate basis, instead of on the media-by-media basis perpetuated by EPA's current structure and regulations. At a minimum, a CIP should set objectives for educating the community on the facility and its operations and for providing routine opportunities for information exchange. Techniques to achieve these objectives could include: community advisory panels, facility tours, integrated compliance reporting, and so on.

The appropriate role of the regulatory agency would also need to be laid out in the CIP. There would need to be an incentive offered in exchange for a facility undertaking the integrated approach to public involvement embodied by the CIP concept -- for example, expedited permit processing, aggregated (multi-media) permit

processing, or relief from media-specific public participation regulatory obligations. This does not mean, however, that the regulator does not continue to play a key role -- the permitting agency would need to interface with both the facility and the community.

Implementation Ideas: The Task Force recommends that the CIP concept be piloted with a few facilities and their neighboring communities. It may be possible to coordinate this effort with other Agency initiatives, such as Project XL or Brownfields, that are intended to pilot innovative approaches to environmental management. The PIT could take the lead on evaluating the results of the pilots. If the efforts prove successful, the Agency should promote widespread use of CIPs and pursue the regulatory changes needed to implement the incentives described above.

- **Pros**--There are many potential benefits to be gained by using CIPs. For example, they move us away from a "command and control" approach by allowing flexibility to follow a plan that makes sense for the situation at hand. If CIPs ultimately replace media-specific public participation requirements, there would still be a basic "level playing field" by virtue of the fact that everyone would have to develop a plan founded on mutual (facility, community, regulator) needs and concerns. Finally, CIPs enable a facility and a community to deal with issues on an aggregate basis, which may help to move EPA towards a more integrated approach to environmental management.

- **Cons**--Providing some relief from current media-specific public participation requirements in exchange for using CIPs will necessarily result in a lack of consistency in approaches to public participation. The lack of consistency could create confusion for industry, communities, and regulators alike -- no one would be certain what they should do or what their opportunities for involvement are. In considering this aspect, however, it is important (1) to remember that there is already inconsistency in public participation requirements across the Agency's media programs; (2) to question whether the desire for consistency outweighs the need for flexibility; and (3) to focus on the need for improved results.

5. Develop a series of case studies on the effectiveness of public participation activities.

Description: Guidance materials and checklists for promoting

public participation provide very useful tools. However, there is a lot that can be learned from real world successes and failures as well. A compilation of actual case studies would be a useful tool to help permitting agencies, industry, and communities put suggested public involvement activities into a context meaningful to their own situations -- in other words, it gives people something concrete they can relate to.

Development: The Task Force recommends that a PIT workgroup compile a number of case studies as a project in FY 1996. The PIT should collect existing case studies from various sources, such as (but not limited to) EPA Program offices, Regional or State community relations offices, and environmental justice groups. Further, the PIT could develop its own case studies based on recommendation 4, above.

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PERFORMANCE MEASURES
TASK FORCE RECOMMENDATIONS

BACKGROUND

An important aspect of improving the environmental permitting process concerns how the performance and success of the permitting programs are measured. To often in the past, regulatory agencies have measured success based on the number of permits that have been issued. This "bean counting" has been identified as one of the problems in the current system that needs to be improved.

On September 11, 1993, President Clinton signed Executive Order 12862, Setting Customer Service Standards. This Order, in part, requires each department and agency to "post service standards and measure results against them". The performance measures presented below have been prepared to comply with the Executive Order. These measures will be publicly available so that all Agency stakeholders can review the performance of the permitting programs.

The Performance Measures Task Force developed the following performance and tracking measures based on the input received at stakeholder meetings held during the PIT project and the written comments received on the draft recommendations. The performance measures will be used to evaluate how a permitting program is doing in achieving environmental results and customer satisfaction. The measures focus on the performance of the permitting process and are designed to evaluate the system as a whole. These measures will help EPA identify where changes may be needed in a program to achieve the desired results. The tracking measures provide information on changes to the permitting processes over time and will be used to identify areas of opportunity for process improvement.

The performance and tracking measures are broken down into the following three categories:

1. Process - those measures that specify how the permitting process is doing compared to established criteria;
2. Results - those measures that determine whether the permits are having their desired outcome; and
3. Customer Service - those measures that evaluate how the general public and regulated community feel about the permitting process.

It is recommended that the performance and tracking measures be piloted in a Region that is still issuing a significant number of

permits. This will allow the measures to be field tested and any modifications made prior to full implementation. The Permits Improvement Team would assist the Regional office as necessary.

It is further recommended that each Regional office provide these measures to any state, tribe or local government, that is authorized to issue permits, for their consideration. These permitting authorities should not be required to adopt these measures. They should be free to modify them or develop their own measures of a successful permitting program.

GENERIC PERFORMANCE MEASURES

Process

1. Timeliness

Each Regional office that is issuing permits will establish processing time goals for each type of permit they issue (presented as a percentage of applications processed within a specified timeframe). Each Regional media permitting program will determine the appropriateness of dividing their permit universe based on the degree of environmental impact (e.g. minor, significant minor, major). Four distinct processing times will be established to cover the entire permitting process, from receipt of application to permit effectiveness. In addition, the total processing time of each permit will be a tracking measure.

> **Example:** For (type of permit[1]), the time required from receipt of an application to agency determination that the application is complete is as follows:
> __% determinations made within 30 days;
> __% determinations made between 30 and 60 days;
> __% determinations made between 60 and 90 days.
>
> For (type of permit[1]), the time required from receipt of a complete application to issuance of the proposed (or final if no public comment is necessary) agency decision to approve or deny the permit is as follows:
> __% proposals/decisions made within 60 days;
> __% proposals/decisions made between 60 and 90 days;
> __% proposals/decisions made between 90 and 180 days.
>
> For (type of permit[1]), the time required from the issuance of the proposed decision to approve or deny the permit to the final agency action is as follows:
> Where limited and straightforward comments are received and no

public hearing:
__% decisions made within 60 days;
__% decisions made between 60 and 90 days.
Where substantial and complex comments are received and no public hearing:
__% decisions made within 90 days;
__% decisions made between 90 and 120 days.
When a public hearing is held:
__% decisions made within 180 days;
__% decisions made between 180 and 240 days.

For (type of permit[1]) that are appealed, the time required from issuance of the Region's final permit decision to the effective date of the permit is as follows:
__% effective within 90 days;
__% effective between 90 and 270 days;
__% effective between 270 and 455 days;
__% not effective within 455 days.

Purpose: To have the Regional offices focus on each step of the permit process. The time required to process a permit is influenced by the performance of both the regulatory agency and the permittee as well as by the level of public comment. To achieve the most rapid processing of a permit as possible the agency and permittee need to work together (and with the public as necessary). Therefore, this performance measure is written to identify how long the permit process is taking for each of the major steps. If the actual processing time of the Regional office is longer than the established goal, steps can be identified to improve the performance in that area.

2. Number of Pending Permits

Each Regional office that is issuing permits will establish a goal for the maximum number of permits for new discharges, emissions or releases (either new facilities or modifications required to address a new discharge at an existing facility) that have exceeded the specified times for approval or disapproval provided in 1 above.

Example: (#) of new applications and permit modifications for (type of permit[1]) have not been approved or disapproved within the __ days set as the maximum for this type of permit action.

Purpose: To provide a measure of the number of permits for new discharges that have not been processed within the defined time periods. This performance measure is just for new discharges.

Backlogs of permit renewals are a tracking measure (see below), since there may be a need to prioritize the issuance of certain renewals (e.g. ecosystem based priorities) rather than renew a permit after it has expired but remains in effect. Trend analyses would allow the regulatory agency to readily determine whether they are improving or falling further behind. A backlog above the goal would trigger an evaluation to determine its cause and how to improve the Region's performance.

Results

1. Environmental Indicators

The success of permitting programs need to evaluated based on the environmental conditions that exist in a particular area. Although permitted discharges are not the only source of pollutants, they are regulated to limit their impact so that environmental goals are achieved. Therefore, it is recommended that all permitting authorities develop specific environmental indicators that will be used to evaluate the overall success of their permitting programs.

The Agency is in the process of developing environmental indicators for the nation. Once the national indicators are determined each Regional office will work with the respective state and tribal governments to establish specific indicators for that jurisdiction. This is being accomplished through the development of Environmental Performance Agreements (EnPA) with states and tribes. EnPA's will include indicators that will be re-evaluated yearly and updated, revised or replaced as needed to accurately measure environmental progress. The first EnPA's will be for states and tribes volunteering in Fiscal Year 1996, with full implementation scheduled for FY97. A key component of the EnPA's is stakeholder participation, which includes the development of appropriate environmental indicators for each jurisdiction. The environmental indicators will be used to determine priorities for the next year, including permitting activities.

2. Level of Compliance

The compliance status of all permitted facilities is an important performance measure for permitting programs. In order for environmental protection to occur, facilities must be in compliance with their permits. Just issuing the permit doesn't ensure protection, therefore, it is necessary to determine the level of compliance with those permits to help identify where greater clarity of permit conditions is needed and where to provide technical assistance.

The initial PIT recommendations on how to measure the level of compliance did not contain sufficient detail to allow stakeholders to give their opinion on this approach. The comments received focused on the need for more detail to better define this performance measure. In addition, the Agency has compliance categories for the individual media programs. However, for the most part these have not been developed with stakeholder input. Therefore, it is recommended that a project team of EPA Headquarters and Regional offices and state and tribal agencies be established to further develop this measure as needed. The project team would work with stakeholder groups in the development of a proposal to measure the level of compliance of permitted entities and identify the causes of non-compliance. The Office of Enforcement and Compliance Assurance (OECA) should be responsible for establishing and leading the broad based project team.

Customer Service

1. Customer Satisfaction

Customer service surveys and standards have been drafted for three groups to which EPA provides service: citizens participating in the permitting process; permit applicants; and authorized state, tribal or local governments. The surveys have been approved by the Office of Management and Budget (OMB) and EPA plans to begin using the surveys in FY'96. The customer service standards will be discussed with stakeholder groups prior to finalization. EPA will prepare a report on the results of the customer service surveys in September 1996.

The Office of Policy Planning and Evaluation (OPPE) has been recommended to conduct the surveys and analyze the results. Each Regional permitting office would receive a report identifying any situations where the customer service standards were not met. In these cases, the Regional office could hold focus group meetings or other outreach activities with appropriate stakeholders to determine a course of action that is intended to improve customer service.

GENERIC TRACKING MEASURES

Process

1. Time Required for Permit Issuance

Each Regional office that is issuing permits will determine the average time required from receipt of a permit application to the Region's final permit decision (this does not include the time to

address any appeals). The range of time required to issue each type of permit will also be determined. This information will be made available in any fact sheets and permit application information distributed by the Regional office.

> **Example:** The average time required to issue (type of permit[1]) is _____ (days, weeks, months) with a range of _____ to _____ (days, weeks, months).

Purpose: To provide the applicant and public with an estimate of the total time required to process a given type of permit. This measure, coupled with the timeliness performance measure will show the amount of time the applicant spends working on the permit as well as EPA.

2. Permit Application Completeness

Each Regional office that is issuing permits will track the number of resubmittals (additional/revised information required for the permitting authority to be able to act on the application) required to obtain a complete application. This information will be presented as a percentage of the total universe of permit applications received.

> **Example:** The percentage of (type of permit[1]) applications requiring resubmittal prior to being complete is as follows:
> __% - No resubmittals required
> __% - One resubmittal required
> __% - Two resubmittals required
> __% - Three or more resubmittals required

Purpose: To have the Regional offices track and make public the number of resubmittals needed to obtain a complete permit application. Regional offices should work with their regulated community to identify causes of excessive resubmittals and determine corrective actions. Permitting programs with high percentages of applications requiring multiple resubmittals would indicate a problem somewhere in the permit process. This could include the information being requested, the clarity of the deficiency letter, the training provided to the regulated community, etc. Trend analysis could be used to determine if progress was being made to reduce the number of applications requiring resubmittal.

3. Cost of Permitting Program

Each Regional office that is issuing permits will estimate the

total agency work hours required to process each type of permit they issue and the average number of work hours required to process each individual permit. This information will allow the EPA Region to sum the totals from each permit category to obtain the overall work hours expended on environmental permitting in that Region.

> **Example:** The total work hours of processing all (type of permit[1]) was (#) for _____ (calendar or fiscal year). The average work hours expended on each permit, based on the processing of (#) permits, is (#) for the same reporting period.

Purpose: To provide an estimate of the total work hours expended on environmental permitting programs. The average work hours information would be useful in determining if programs of similar complexity had significantly different averages. This information could also be used to compare the average processing times of the Regional offices. Evaluations could then be conducted to determine the cause of the difference and learn from successful programs. Trend analysis could be used to determine if work hours are increasing or decreasing.

4. Number of Pending Renewal (Air/Water) and Interim Status (RCRA) Permits

Each Regional office that is issuing permits will track the number of permits that have expired but remain in effect and have not been renewed, or in the case of RCRA, the number of facilities that are operating under an interim status designation.

> **Example:** (#) (type of permit[1]) have not been renewed by the expiration date as of _____ (reporting period).

Purpose: To provide a measure of the number of permits that have not been renewed by their expiration date. Trend analyses would allow the Regional office to readily determine whether the number is increasing or decreasing. Additional analysis would be needed to determine if an increasing trend was a problem or the result of a decision by the Region to focus on ecosystems and allow permits in non-priority areas to remain in effect.

Results

1. Pollution Prevention/Innovative Technology

Each Regional office that is issuing permits will track the number and percent of their permits that include innovative technology or pollution prevention conditions that are included as a means, in

whole or in part, to achieve compliance. These conditions could include actual pollution prevention activities or investigations into possible pollution prevention techniques that could assist the facility in complying with permit conditions. Discharge, emission and release limitations would not be considered pollution prevention conditions. The Regions would require the same information from delegated state, tribal and local agencies.

> **Example:** (#) and (%) of (type of permit[1]) that includes pollution prevention conditions (this term requires definition) in the permit as a means, in whole or in part, to achieve compliance with permit conditions.

> **Example:** (#) and (%) of (type of permit[1]) that utilize innovative technology (this term requires definition) to achieve compliance with permit conditions.

Purpose: To determine the effectiveness of permitting programs in encouraging the use of pollution prevention and innovative technologies. If the percentage is below what a regulatory agency was hoping to achieve, additional analyses could be conducted to determine why pollution prevention approaches or innovative technologies were not being used to achieve permit compliance. This tracking measure should be reevaluated, within 1-2 years, to determine if it should be changed to a performance measure, with a specific goal as to the percentage of permits that should utilize pollution prevention techniques or innovative technologies to achieve compliance.

[1] Type of Permit - Each permitting authority would individually define the permit universe that would be included within the performance or tracking measure.

POLLUTION PREVENTION INCENTIVES TASK FORCE RECOMMENDATIONS

A. Background/Approach

The Pollution Prevention Incentives Task Force derived its mission from the recommendations of the National Performance Review (NPR). The NPR stated that EPA should encourage pollution prevention (P2) by providing flexibility, creating P2 incentives in permits and compliance approaches, and issuing guidance on how to implement innovative strategies and procedures. The NPR also recommended that EPA facilitate permitting of innovative technologies and identify what changes are necessary to achieve this.

EPA has a strong commitment to fostering pollution prevention because experience has shown that it is good for the environment and the economy alike. To implement P2 on a larger scale calls for flexible thinking, concrete and ambitious goal-setting, strong commitment at all levels of government and industry, and an innovative effort that only business can supply. The P2 Incentives Task Force explored these dynamics to help EPA improve the permitting system to encourage investment in P2 measures.

The Pollution Prevention Act of 1990 establishes a hierarchy for environmental protection (source reduction, reuse, recycle, treat, store and dispose) with P2 as the preferred approach. As the hierarchy acknowledges, P2 approaches are not attainable in all instances. In the discussion that follows, many of the recommendations are relevant to P2, recycling, or other innovative approaches.

Streamlined permitting may have an important role in fostering P2. The PIT is focusing on eliminating factors of the permitting system that are overly rigid, cumbersome, and time-consuming. These changes can free up additional resources for potential investments in P2. Yet, streamlined permitting might not mean more pollution prevention unless we also allow greater flexibility, and design incentives to encourage P2-based activity.

This Task Force is emphasizing incentives for P2 because, as a general rule, it is in industry's interest to prevent pollution. Our goal is to create permitting incentives and eliminate barriers for industry to do what is largely in their own best interest.

The following Task Force recommendations present approaches for forging the necessary connection between more efficient permitting and real progress in preventing pollution.

B. Task Force Recommendations

1. Link performance-based permitting with facility-based permitting, consolidation of permitting requirements, and cross-media permitting.

The Task Force recommends that EPA and state, tribal and local permitting authorities use performance-based permitting as a means of achieving greater flexibility. By performance-based permitting, the Task Force means permitting which recognizes that a standard containing a numeric level does not automatically dictate which technology facilities are to use. On the rule development side, this means writing standards that set numeric levels where possible and appropriate. Many EPA technology-based rules have in fact been written that way. This is because "technology-based" is short-hand for a rule that sets a standard at the numeric level at which the referenced-technology performs. The reference technology is determined by the type of standard being set, such as best demonstrated available technology.

What is key is how "technology-based" rules are interpreted by permit writers. Often, they interpret the rules as requiring the use of the referenced technology. To avoid this, EPA rulemakings should explicitly acknowledge that permit writers are authorized to evaluate technologies other than the referenced technology. Flexibility is needed to allow facilities to use innovative approaches that prevent pollution and achieve greater emission reductions across media. Flexibility would not be allowed to compromise environmental protection, since the permit writer would still have to be satisfied that the permit applicant could meet the performance standard in question.

It is key to recognize that permit writers are generally burdened with heavy case loads, and that it substantially increases their burden if they must regularly evaluate alternative technologies to determine whether they perform at a level equivalent to that of the standard's reference technology. Making it easier for permit writers to evaluate alternative technologies is a task that EPA and state, tribal and local permitting authorities need to address systemically. Hopefully, some of the specific steps provided at the end of this section will meet this need.

The steps in this recommendation should provide the following advantages: (1) making it easier for facilities to use innovative technologies (often key for P2); (2) giving facilities more latitude to explore P2 approaches; and (3) giving facilities a greater economic incentive to explore P2 approaches. Looking at a facility as a whole, rather than a collection of individual pipes each of which needs to meet an individual emission level, can often provide significantly greater opportunities for preventing pollution and making wise investments that yield long-term savings.

The Task Force recommends that EPA, state, tribal and local permitting authorities take steps to link performance-based permitting with facility-based permitting, consolidation of permitting requirements by industry sector, and cross-media permitting. These recommendations build on the Administrative Streamlining Task Force's recommendation for flexible permitting. It is important to note that the focus here is on facility-based permitting, and not company-based, which is a different issue.

These steps are also in line with the alternatives being explored in a host of new EPA initiatives, including several priority projects of the Administration's program to reinvent environmental regulation. Project XL, and alternative strategies for industry sectors, communities, and federal agencies, can address a

combination of facility-based permitting and cross-media permitting issues; consolidating federal air rules for the chemical industry will be a test case for consolidation. Demonstration projects in multi-media permitting, as led by the Pollution Prevention Policy Staff are expected to produce several multi-media P2-oriented permits in the next year. The Environmental Technology Initiative's (ETI's) Innovative Technology Permitting Program, being implemented by the Office of Policy, Planning and Evaluation, is currently advancing over two dozen projects designed to eliminate barriers to technology innovation in the permitting process. In addition, ETI's Environmental Technology Verification Program, being implemented by the Office of Research and Development, will soon begin providing credible performance information on more cost effective innovative technologies.

Based on the foregoing, the Task Force recommends the following:

a. The concepts of this first recommendation should be incorporated into CSI, Project XL, ETI, and multi-media permitting. PIT members will work with these initiatives to help achieve the implementation of these concepts.

b. As Regional offices disinvest from oversight of state permit programs, they should collaborate with state, tribal, and local permitting authorities in assessing relevant P2 techniques, where appropriate.

c. To the extent possible, subsequent EPA rulemakings should explicitly acknowledge that permit writers are authorized to exercise their judgment in establishing performance-based limitations based on the technology referenced in the development of the regulatory standard. For example, in the NPDES program, the permitting authority does not approve technologies. The permit writer prepares a permit which includes limitations and conditions, and it is up to the facility to determine how they will meet the permit limits.

d. Examine what steps would be necessary to move towards institutionalizing some of the approaches described above in core EPA programs. This should be undertaken by a PIT workgroup.

e. State permitting authorities should use the results of the Environmental Technology Verification Program or similar state programs to reduce the need for testing and indepth engineering review during permitting.

2. Create industry-sector inventories of regulatory thresholds for permitting.

The Task Force recommends developing a public inventory of existing federal regulatory thresholds for permitting requirements on an industry-by-industry basis. Specifying the thresholds would help facilities to assess the costs and benefits of going below the thresholds and opting out of the permitting system. The Task Force believes that in most instances the savings achievable by getting out of the permitting system would more than offset the investments needed to get releases below thresholds.

Data in this inventory could serve as a reference point for discussions between communities and local facilities about financial incentives for using pollution prevention approaches. Mutual discussions could more easily be tied to the financial incentives for a facility to reduce releases to a level where permitting is reduced or unnecessary, and outcomes that could represent cost savings to the facility.

The Office of Pollution Prevention and Toxics (OPPT) in EPA is piloting this approach for the metal finishing industry, which is comprised mainly of small to medium-sized businesses. Since industry faces federal and state regulations, OPPT will try to include key state regulatory requirements, too. If it appears that some opportunities for getting below certain thresholds bear more promise than others, EPA would emphasize those opportunities most likely to result in success.

EPA recognizes that some explanation about possible permit variances or exemptions will be needed in an industry-sector inventory. In some instances, for example, emissions trading is allowed, and a facility may have legitimately purchased an emissions trading credit. EPA will need to provide sufficient explanation so that users of the inventory will find its data relevant and meaningful to their own applications.

To be clear, the scope of an inventory will be limited to linking permitting thresholds with the economic incentives for getting below thresholds. It will not provide facility-specific information or health/environmental effects data.

The Task Force's specific recommendations are:

a. OPPT should develop a pilot inventory for an industry sector, such as metal finishing (this effort has already started).

b. OECA and OPPT should investigate whether OECA industry sector notebooks (developed for compliance assistance) could be used as a basis to help industry conduct analyses between the costs of compliance and the costs of getting below permitting thresholds.

3. Explore offering alternative emissions tracking in exchange for using P2 practices.

The Task Force recommends that EPA explore whether an alternative emissions tracking approach could be offered in exchange for a facility commitment to use P2 practices to achieve compliance in whole or in part. Federal permitting requirements generally require facilities to monitor releases (using EPA-approved methodology) and report this data to regulatory agencies. An alternative approach would be to allow a facility to use third-party auditors to convert its proprietary process control measurements into release data that would be reported to EPA as public data.

A primary reason EPA is interested in this approach is that using process data encourages facilities to find opportunities for pollution prevention. Second, it may provide communities with significantly more reliable data on facility emissions in their communities. Third, there may be a significant economic incentive for industry to avoid the cost of expensive monitoring equipment.

The recommended approach is basically an equivalent alternative to current monitoring requirements. (Reducing monitoring requirements is beyond the scope of this particular recommendation.) The Task Force acknowledges that EPA would need to verify P2 commitments made in exchange for using this alternative.

EPA recognizes that there are some concerns about whether the public would have confidence in this recommended approach. One concern is that industry consultants might lack credibility with local communities. The key difference in what the Task Force is proposing is that industry would not pay a third-party auditor directly. The apt analogy is the third-party auditor system used in this country for accrediting laboratories. Labs pay a non-profit organization for the services of the third-party auditors. The auditor's sponsoring organization (the non-profit) has an overriding interest in maintaining the integrity and independence of their auditors, because a biased auditor reflects badly on the organization and the entire accreditation system.

Third-party auditors would have to be trained and accredited by an accrediting organization. Among other things, they would probably need to be trained in knowing what kind of data to get from facilities, and learning the calculations to perform to convert facility process data into reportable emissions data. Given the great diversity of American industry, this may be an idea that could be piloted on an industry-sector basis.

The Task Force recommends the following specific steps:

a. A PIT workgroup should consult with the project team for piloting third-party audits for industry compliance (one of the President's 25 initiatives for reinventing environmental regulation) to further investigate the viability of this approach.

b. This PIT workgroup should also explore potential overlap with International Organization for Standardization (ISO) 14000 efforts.

4. Share P2 data with permit applicants and affected communities, and give basic P2 training to permit writers.

The Task Force recommends that EPA and state, tribal and local permitting authorities share P2 data with permit applicants and affected communities, and give basic P2 training to permit writers. Both of these ideas would provide a way for P2 to be emphasized up-front in the permitting process.

Most permit writers are at the state, tribal, and local level and face workloads that are generally perceived as heavy. To date, their experience with P2 has ranged from no involvement to personal commitment to P2, with lack of time and knowledge often being cited as barriers to their promoting P2.

Despite this perception about the difficulty permit writers face in promoting P2, a recent survey of permit writers in northeastern states conducted by the Northeast Waste Management Officials' Association (NEWMOA) indicates the vast majority of those surveyed wanted P2 training. They said they wanted training in when, how, and where they can use P2 directly in their jobs, and under what authority they can act. NEWMOA is piloting a P2 training for permit writers, based on a review of many permits where P2 has already been incorporated. Efforts such as NEWMOA's could serve as a model for training in other parts of the country, and could be

tailored according to the permitting authority and regional needs.

At a minimum, permit writers could serve as a reference for facilities on where to turn (such as local technical assistance centers) for P2 information. It is key that they have a baseline of information about P2 concepts and appreciate the value of sharing P2 data with facilities. Training could most effectively be offered at the state and EPA regional level. EPA, in consultation with states, tribes and local permitting authorities, should evaluate whether P2 reference materials need to be developed and sent to permit applicants and made available to the public.

The Task Force recommends that pollution prevention be made part of the core training for permit writers being advocated by the PIT Training Task Force. Stakeholders have suggested that P2 training should also be given to enforcement and regulatory personnel.

5. Develop an enforcement policy to accommodate the possibility that innovative P2 technologies may not perform as expected or may take longer to achieve compliance.

The Task Force believes it is key to examine the current incentives and disincentives for pollution prevention in environmental enforcement policies as well as in permitting. One reason is that innovative P2 technologies do not always perform as expected. A facility may have little incentive to invest in an innovative P2 technology -- and risk its compliance on how that technology will perform -- if there is no "soft landing" enforcement policy to cushion against enforcement penalties in the event the technology fails to perform as expected. Some form of risk-sharing, such as mitigation of penalties, should be accepted by EPA.

A second reason that enforcement policies are key to encouraging P2 through permitting is that using P2 approaches -- such as process changes -- sometimes takes longer than using off-the-shelf control devices. If EPA can offer no extension in compliance deadlines (as appropriate for making P2 changes), facilities may opt for using control devices to ensure they meet these deadlines.

The Task Force recommends that the PIT and the Office of Enforcement and Compliance Assurance (OECA) establish a workgroup to explore a "soft landing" enforcement policy for facilities that adopt innovative P2 technologies, including those verified by EPA or states, that fail to perform as expected. A soft landing policy could remove a significant disincentive against using innovative

technologies by providing a cushion against enforcement penalties or costly remedial solutions, and allowing a facility some flexibility in reaching compliance. For example, a facility might be allowed time to achieve compliance through adjusting some other part of its process, allowing it to keep its P2 technology intact.

In addition, the workgroup should identify more ways to offer compliance extensions, consistent with statutory compliance extension mechanisms, in exchange for commitments to use P2 approaches for compliance. (The Task Force supports EPA's recently initiated pilot efforts like Project XL that will be exploring this kind of an approach.) The Task Force also recommends that OECA and EPA Program offices consider using an approach developed by stakeholders in the Industrial Pollution Prevention Project (IP3): through rule-specific guidance, allowing permit modifications to be made under specified conditions that extend the time for compliance. This approach has received EPA-wide endorsement as part of the Clean Water Act reauthorization process.

The Task Force recognizes the need to address boundaries as to how "soft" a soft landing enforcement policy should be, and how long a compliance extension should reasonably be. EPA has previously explored these issues in the IP3, and will need to clarify them again. The State of New Jersey, through an Environmental Technology Initiative grant, will be exploring these limits in its own programs.

6. In all general permits and permits-by-rule, include language that explains the preference for using P2 approaches and the potential economic benefits of P2.

The Task Force recommends that EPA and state, tribal and local permitting authorities incorporate language in all general permits and permits-by-rule that explains the environmental management hierarchy (source reduction, reuse, recycle, treat, store and dispose), the preference for using P2 to achieve compliance, and the potential economic benefits associated with P2. If there are differences between EPA's and a state, tribal or local permitting authorities' hierarchy, the permitting authority could list both.

Individual permits are not included in this recommendation because it is recognized that, in these cases, major opportunities for P2 can be identified while the permit conditions are being developed -before permit issuance. Therefore, for individual permits, it would be better to put this type of language up-front in the

process, such as in permit call-in letters or model permit applications used in the RCRA program. Also, implementing recommendation 4 would encourage including P2 up-front in the process of preparing individual permits.

It is recommended that a PIT workgroup develop sample language and make it available for distribution through core training sessions for permit writers. The workgroup should include permit writers from the Regions and state, tribal and local permitting agencies.

TRAINING TASK FORCE RECOMMENDATIONS

Background

The National Performance Review Team for Permit Streamlining identified training for permit professionals as a priority. Their specific recommendation included the following suggestions: establish an EPA Permits Institute, require State/Federal permit professionals to complete core curriculum, review permit organizational staffing for appropriate skills mix and provide financial/other incentives and awards to permit professionals. In addition to these specific proposals, training was also highlighted under the category of "Increasing Access to Permitting Information." Suggestions under this category discussed training for the public and applicants. Specific recommendations included: draft clear, understandable guidance manuals for states, tribes, local authorities, applicants and the general public; and hold periodic training workshops in conjunction with state associations, trade associations and citizens' groups. The PITs Training Task Force chose to address training broadly to include the regulated community, public and permit professionals.

Overview

Effective environmental permitting relies upon effective transmittal and use of information by all interested parties. State, tribal, local and EPA permit writers need information of the specific characteristics of the facilities being permitted, and need knowledge of the applicable statutes and regulations. The regulated community also needs information, in particular of the permitting process and how regulators use their information. Citizens and environmental groups also need to know the permitting process in order to effectively participate in the permitting process.

The lack of information leads to several problems. Delays in completing permits occur if permittees and citizens do not understand the permitting process and use the appeals process to delay issuance until they are satisfied they fully understand all provisions of the permit, including how each provision was developed. Inconsistencies between permits, that should be similar, occur if permit writers do not understand the basis and reason of the underlying regulations or do not know of applicable guidance.

Recommendations

In order to provide the necessary information to EPA, state, tribal and local permit writers, the regulated community, and citizens and environmental groups, the Task Force recommends four actions.

1. Provide information to the regulated community and others. The Task Force recommends that EPA national Program offices use a series of informational tools to educate permittees and citizens about the permit process. Specific tools to be used or developed are:

a. Using the Internet, trade associations and small business development centers to announce training opportunities and distribute training materials. The announcement should include an explanation of the contents of the training. Program offices should also coordinate to standardize and post these announcements and develop and implement a program to educate the public on the permitting process using tools such as: press releases, infomercials, radio/TV announcements and commercials.

b. Development of a generic fact sheet which summarizes a new permitting project in plain English and may be used as a tool to explain to interested parties the permitting action. The Program offices should coordinate in the development of these fact sheets to achieve as much consistency in format and information provided as possible. After the generic fact sheet is developed, all permitting authorities should prepare a fact sheet, following the model, as part of the permitting process.

c. Develop a clearinghouse of existing model permitting applications and instructions (this should be accomplished in cooperation with state, tribal, and local

associations). In addition, the Program offices should request the permitting authorities, especially if EPA, to use "plain English" instructions with application forms and to include a single point of contact (see Administrative Streamlining Task Force report).

2. Provide information on every new significant[5] rule. The Task Force recommends the development and use of a series of informational tools to educate Regional, state, tribal, and local permitting authorities, permittees, and citizens about the requirements and reasons for new rules. Specific actions are:

a. Program offices should prepare, as part of regulatory development for significant rules, a package of information which explains the new requirements, including information about permitting and any implementing guidance. The information package should contain materials targeted to different audiences, the regulated community, the permitting authorities and the public and provide contacts for additional information. This package of information must be available at the time of promulgation (e.g., via Internet). Include in the Federal Register information about the availability of this material.

b. A PIT workgroup (including representatives from program the offices) should develop a standardized fact sheet format to be used with each new significant rule. Once developed, the Program offices should use this format for transmitting information about each new significant rule either electronically (e.g., Internet) and/or via mailing lists.

3. Define and provide training on core skills and knowledge needed to issue permits. The Task Force has developed the core skills and knowledge that are recommended for permit writers to be effective in their jobs. The Task Force recommends that the Administrator endorse a training program for permit writers, including the core curriculum for permit writers (listed below). This will require the commitment of resources to develop the training and travel funds to attend the training. A PIT workgroup (comprised of representatives from each Program office) should take the lead in

[5] A significant permitting rule should be determined by considering its environmental impacts, community concerns, and/or complexity of the regulated facilities.

designing the training program. States, tribes, and local permitting authorities should participate on the workgroup. Each Program office also needs to identify the additional media specific knowledge which would be necessary for that program. All training should be made available to interested parties, both internal and external to EPA. Examples of these core skills and knowledge include:

- the need and purpose of permits,
- factors that comprise an enforceable permit,
- applicable parts of the environmental statutes,
- when a permit application is complete,
- pollution prevention and innovative technology,
- waste management hierarchy,
- development of permit conditions,
- public speaking and communicating with different audiences,
- technical writing,
- sensitivity (understanding needs of stakeholders),
- environmental justice,
- holistic view of permitting - multi-media/coordination of permits, and
- training on the new permitting approach (if adopted).

4. Store and provide critical knowledge. The Task Force has identified a series of tools to better provide written guidance and accumulated permitting office experience to Regions, states, tribes, local authorities, permittees, and citizens. The Task Force recommends that the national Program offices develop these tools and make them available as needed. These tools are:

a. Provide electronically (Internet) an index and synopsis of guidance documents.

b. Creation of EPA subject-based work groups, for example to coordinate issuance of combustion permits between the Air, RCRA and TSCA programs. To assist in the development of the subject based work groups, the Regions should establish regional multi-media permit coordination work groups. Representatives from the regional multi-media permit coordination work groups and the Headquarters Program offices will participate on the subject-based work groups. The work groups will focus on implementing more organized permit "quality control" (e.g., collecting, storing and disseminating EPA, state, tribal, local agencies, and permit writers appeal issues

(major and minor) and/or other issues that have an impact on the effectiveness and enforceability of permits).

c. Establishing quasi-independent permit review teams to assure the issuance of quality permits. The review teams may consist of representatives from the above-mentioned, subject-based work groups. The review teams would evaluate significant permitting actions[6] to assure all aspects of the permitting process were addressed (environmental justice, pollution prevention, public notice/hearing, and understandable compliance terms). In FY-96, the permit review team and a state volunteer will conduct a pilot to assess the effectiveness of the permit review team.

[6] A significant permitting action should be determined by considering the environmental impacts, community concerns, and/or complexity of the facility being permitted.